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**

STAFF'S REPLY BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for *Staff's Reply Brief,* states as follows:

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INTRODUCTION

The purpose of a reply brief is to respond to issues and arguments raised in the brief previously filed by one's opponent.[1] Of course, the Staff does not actually have an opponent in this general rate case. The Staff is the investigatory arm of the Commission. Its duty is to gather, analyze and present facts to the Commission, together with its recommendations based on its analyses. In formulating its recommendations, Staff looks to (1) relevant prior decisions of the Commission, (2) best practices, and (3) the public interest.

ARGUMENT

1. Cost of Capital Issues:

What Rate of Return ("ROR") should the Commission allow Spire Missouri?

The ROR is synonymous with the Weighted Average Cost of Capital ("WACC")

[1] ***Black's Law Dictionary,*** 186 (7th ed., 1999).

which is the sum of the cost of each capital component weighted by its percentage of the total. Cost of capital is generally one of the largest issues in a rate case. At issue in this case are various inputs to that calculation: the Return on Equity ("ROE") and the composition of the capital structure. Staff is aligned with OPC as to the former and with Spire as to the latter.

Return on Equity:

In its *Initial Brief,* Spire boasts of the qualifications of its expert, Dylan D'Ascendis,[2] but does not mention the fact that he used a non-regulated proxy group as well as a standard proxy group of regulated gas utilities in his calculations.[3] That omission is understandable, since Mr. D'Ascendis thereby violated several fundamental principles of regulatory financial analysis. Non-regulated enterprises are simply not comparable to regulated utilities.[4]

Neither does Spire explain how Mr. D'Ascendis got to his point recommendation of 9.95% from his adjusted range of 9.66% - 12.75%. Staff's expert, Dr. Seoungjoun Won, demonstrated that Mr. D'Ascendis manipulated his calculations to obtain inflated results by using inflated inputs, a common occurrence in general rate cases. Garbage in, garbage out, as the saying goes. Both Dr. Won and OPC's expert,

[2] *Spire's Initial Brief,* p. 81.

[3] D'Ascendis Direct, p. 6, l. 14, to p. 7, l. 2.

[4] Dr. Won testified, "Mr. D'Ascendis' non-price regulated proxy group is not reasonably comparable to Spire Missouri or price regulated natural gas utilities and, therefore should not be used for estimating the COE of a natural gas utility. Because non-price regulated companies are included in Mr. D'Ascendis COE estimates, his COE estimates are significantly overstated compared to regular natural gas utilities' COEs." Won Rebuttal, p. 7, ll. 6-10.

David Murray, provided reliable, market-based ROE recommendations to the Commission.

Spire attacks Staff's ROE recommendation in several respects, none of which have any merit. First, Spire asserts that Dr. Won misunderstands the process of regulatory financial analysis:

> The method in which Dr. Won derived his recommendation indicates he misunderstands the relationship between the cost of common equity and the authorized ROE. For regulated utilities, the ROE equals the investor-required ROE which equals the allowed ROE, as reflected in the Hope and Bluefield Supreme Court decisions cited above.[5]

In fact, it is Spire that misunderstands. Both Dr. Won and Mr. Murray distinguished the cost of common equity ("COE"), which is the minimum share value required by investors, from the ROE, which is a value assigned by a public utility regulatory commission such as the PSC.[6] Both experts did so because the two values are simply not the same. The commonly-used and widely-accepted techniques of financial analysis consistently show that investors require a significantly lower share value than that assigned by regulatory commissions.[7] This disconnect requires the use of distinct terms to differentiate the different values.

Next, Spire describes Staff's benchmark analysis, characterized by Spire as a "rearview mirror" approach, applying the calculated average change in COE (-0.43%) to

[5] *Spire's Initial Brief,* p. 84.

[6] *Staff's Revenue Requirement Cost of Service Report,* p. 7, ll. 9-12.

[7] Murray Direct, p. 2, l. 14, to p. 3, l. 6.

the 9.80% ROE authorized in Spire's last rate case to get its point recommendation of 9.37%.[8] Spire offers several criticisms of Staff's analysis:

- Dr. Won looked back at economic conditions that existed in 2017, the test year in the last Spire rate case, and ignored current market conditions.[9]
- Dr. Won used mismatched data for his DCF analysis, employing price data for the period of January through March 2021, but using Value Line data as of August 28, 2020, for his dividends-per-share, resulting in skewed and unreliable results.[10]
- Dr. Won claimed that he used the Value Line methodology to calculate betas for his CAPM but his betas are inconsistent with published Value Line betas, biasing his CAPM results downward.[11]

Responding to Spire's criticisms one by one: the careful reader will note, on pages 7 through 12 of *Staff's Revenue Requirement Cost of Service Report,* Dr. Won's survey of current economic and capital market conditions. Perhaps Spire's experts and attorneys are not careful readers. Throughout this survey, Dr. Won compares conditions obtaining now to those prevalent in 2017, the test year for Spire's last rate

[8] *Spire's Initial Brief,* p. 83-84.

[9] *Id.,* p. 84.

[10] *Id.,* pp. 84-85.

[11] *Id.,* p. 85.

case, in order to show how they have changed.[12] All of those changed conditions, by the way, indicate that the cost of capital has fallen since Spire's last rate case.[13]

With respect to Spire's next criticism, it is true that Dr. Won employed price data for the period of January through March 2021 and Value Line data as of August 28, 2020, for his dividends-per-share, for his DCF analysis.[14] However, as Dr. Won explained at hearing, the latter figures were the latest available, historically-proven, non-estimated data.[15] There was no data mismatch and no skewed and unreliable results (by Dr. Won, at least). .

Next, Spire complains that Dr. Won claimed that he used the Value Line methodology to calculate betas for his CAPM, but his betas are inconsistent with published Value Line betas.[16] However, as Dr. Won attempted to explain to Spire's attorneys and experts several times, he used Value Line's methodology, *not* Value Line's betas.[17] Dr. Won did not select inputs intended to bias his CAPM results downward.[18]

[12] *Staff's Revenue Requirement Cost of Service Report,* p. 10, ll. 4, 18, 28-29; p. 10, l. 30, to p. 11, l. 3.

[13] *Id.,* p. 10, ll. 16-20: "The takeaway is that capital is now less expensive and the ROE should therefore be lower than at the time of Spire Missouri's last general rate case. Staff's CAPM model, which shows that COE decreased by 34 basis points (see SJW-14), confirms that the CAPM COE estimate is lower in the current period than it was during the period of the last Spire rate case."; p. 10, ll. 26-27; p. 11, ll. 6-12; p. 12, ll. 15-16; p. 19, l. 19, to p. 20, l. 4.

[14] *Spire's Initial Brief,* pp. 84-85.

[15] Tr. vol. 14, p. 762, l. 25, to p. 763, l. 2.

[16] *Spire's Initial Brief,* p. 85.

[17] Tr. vol. 14, p. 764, ll. 19-21; p. 768, ll. 13-14; p. 800, l. 22, to p. 801, l. 1.

[18] *Staff's Revenue Requirement Cost of Service Report,* p. 18, fn. 37: "Staff still believes Value Line's beta calculation methodology is proper to use a CAPM analysis. Staff's beta is consistent with Value Line's beta calculation methodology. Consistent with Value Line's approach to calculating beta, Staff used 5-years of historical weekly returns of the subject company and the New York Stock Exchange ("NYSE")

Next, Spire suggests that, if Dr. Won's CAPM was redone using different inputs, namely, the Value Line betas that he did not use, different results would be achieved.[19] This is a point so obvious, and so entirely meaningless, that Staff stipulated at hearing that, "if you use different inputs you will get different results . . . ."[20] This purported argument by Spire proves nothing.

As part of its analysis, this Commission generally reviews recent ROE awards granted by other PUCs.[21] Spire claims that Dr. Won used stale data when analyzing ROEs recently awarded by other PUCs because the most recent report from S&P Global Market Intelligence indicates that the average authorized ROEs for gas utilities in the first half of 2021 is 9.62%, an increase from the average ROE of 9.46% in 2020.[22] However, Dr. Won pointed out at hearing:

> Q. … did you testify that it is trending down?
>
> A.· ·In second quarter of 2021, it go [*sic*] down.[23]

Spire also asserts that both Staff's and OPC's recommended ROEs are not market-based and should be rejected by the Commission.[24] This is a curious assertion.

index. The covariance of the weekly returns on the NYSE index and the weekly returns on the subject company is divided by the variance of the weekly returns on the NYSE index to determine raw beta (unadjusted beta). Staff then adjusted the raw beta using the Blume adjustment formula as used by Value Line: Adjusted Beta = (1/3) + (2/3)(Unadjusted Beta)) (see Pinto, J. E., Henry, E., Robinson, T. R., Stowe, J. D., & Cohen, A. (2010). Equity Asset Valuation, CFA Investment Series.)".

[19] *Spire's Initial Brief,* p. 85.

[20] Tr. vol. 14, p. 768, ll. 23-24.

[21] PUC is the abbreviation for Public Utility Commissions.

[22] Spire Ex. 51, p. 1.

[23] Tr. vol. 14, p. 800, ll. 2-4.

[24] *Spire's Initial Brief,* p. 91.

In Dr. Won's DCF analysis, a result was obtained by adding a growth rate to a dividend yield, as described by the following formula:[25]

$$k = (1 + \cdot 5g)D \,/\, P + g,$$

where: k = ROE;
D = current dividend;[26]
P = current share price;
g = growth rate.

The dividend yield component of this equation, D/P, includes current share price as an input. How is that not market-based?

Likewise, both the risk premium method and the CAPM obtain a result by adding a risk premium to a current risk-free rate. As Dr. Won explained, with reference to his CAPM, "The MRP [= market risk premium] is calculated by subtracting the risk-free rate from the expected market return."[27] For the risk-free rate, Staff used the average yield on 30-year U.S. Treasury bonds for the three-month period ending March 31, 2021.[28] That is a market-driven value. For the risk premium, Staff used several sets of market-driven data:

> For the MRP estimate, Staff relied on three sets of data sources. First data set is the long-term geometric mean of historical return differences between large company stocks and long-term government bonds from 1926-2016 and 1926-2019, and those MRP estimates are 4.5% and 4.7%, respectively. The second data set is the long-term arithmetic mean of historical return differences between large company stocks and long-term

[25] *Staff's Revenue Requirement Cost of Service Report,* p. 17, l. 9, to p. 19, l. 6; p. 19, ll. 7-18.

[26] Staff used an adjusted dividend yield, $(1 + .5g)D,$ to account for the fact that the dividends are paid on quarterly basis. *Staff's Revenue Requirement Cost of Service Report,* p. 16, ll. 12-13.

[27] *Id.,* p. 17, ll. 23-24.

[28] *Id.,* p. 18, ll. 7-8.

> government bonds from 1926-2016 and 1926-2019, and those MRP estimates are 6.0 % and 6.1%, respectively. The third data set is the long-term geometric mean of historical return differences between S&P 500 and long-term government bonds from 1928-2017 and 2028-2020, and those MRP estimates are 4.83% and 4.84%, respectively. The fourth data set is the long-term arithmetic mean of historical return differences between S&P 500 and long-term government bonds from 1928-2017 and 2028-2020, and those MRP estimates are 6.38% and 6.43%, respectively.[29]

Thus, Spire's assertion that Staff's recommended ROE is not market-based is revealed to be simply false.

Spire also complains that Staff and OPC failed to update their ROE recommendations for current market conditions by disregarding inflation.[30] However, the reality is that Dr. Won carefully considered inflation.[31] Dr. Won testified:

> Q. On page 22, lines 15-17, Mr. D'Ascendis stated that since inflation is positively correlated to both interest rates and authorized ROEs, increases in inflation would indicate a rising cost of common equity for Spire. Do you agree with the statement?
>
> A. No, I do not agree with the statement for multiple reasons. First, there is no clear evidence that the current inflation surge will be continued. Federal Reserve Chair Jerome Powell said inflation had picked up but should move back toward the U.S. central bank's 2% target once supply imbalances resolve. Second, it is unclear how the inflation rate will impact on the authorized ROE. Because of the impacts of other economic factors, a theoretical positive relationship between the inflation rate and the COE is not always realized. As shown in Figure 1 below [omitted in this excerpt], there is no consistent correlation between average natural gas utility authorized ROEs and annual inflation rates in the past decade. Therefore, even if there will be some higher inflation rates, it is hard to justify a higher authorized ROE[.]

[29] *Id.,* ll. 11-22.

[30] *Spire's Initial Brief,* p. 87.

[31] *Staff's Revenue Requirement Cost of Service Report,* p. 8, l. 21, to p. 9, l. 2; p. 10, ll. 4, 10.

Spire’s criticism related to inflation is simply a red herring.

Spire also argues strenuously for its inappropriate small size adjustment and flotation costs adjustment.[32] Spire is smaller than the average of its regulated natural gas proxy group and thus arguably more risky, however, as Dr. Won pointed out, Spire’s long-term issuer rating from Moody’s Investors Services is greater than the average long-term issuer ratings for Spire’s regulated gas utility proxy group.[33] Dr. Won testified that it is commonly understood in the financial services industry that a higher bond rating brings a lower risk premium.[34] Consequently, Spire’s proposed small size adjustment is unnecessary because the bond rating agency has already considered its overall financial and business risks when awarding the higher rating.[35]

As for the flotation costs adjustment, Dr. Won explained that Mr. D’Ascendis improperly attributed Spire, Inc.’s flotation costs to Spire Missouri.[36] The proposed flotation costs adjustment is therefore entirely inappropriate, particularly in view of Spire’s insistence that it does not receive capital from its parent.[37] Mr. Murray also testified, “That's definitely very improper. I take specific issue with the flotation cost

[32] *Spire’s Initial Brief,* pp. 88-89.

[33] Won Rebuttal, p. 36, ll. 10-13.

[34] *Id.,* ll. 13-14.

[35] Won Rebuttal, p. 36, ll. 14-16; Murray, Tr. vol. 14, p. 812, ll. 22-24.

[36] Won Rebuttal, p. 36, ll. 18-19.

[37] *See e.g. Spire’s Initial Brief,* p. 91.

adjustment."[38] All of Spire's proposed adjustments are inappropriate and should be rejected.

Composition of the Capital Structure:

There are two issues concerning the ratemaking capital structure: first, which capital structure to use, Spire Missouri's or its parent's; second, whether or not it should include short-term debt. Staff and Spire contend that Spire Missouri's capital structure should be used and that short-term debt should be excluded. OPC argues that Spire, Inc.'s capital structure should be used and that it should include a quantity of short-term debt. The effect of adopting either of OPC's proposals would be a reduced revenue requirement.

Which Capital Structure to use?

OPC contends that the Commission should use Spire Inc.'s dynamically-managed capital structure as the ratemaking capital structure in this case because Spire Missouri is targeting an unnecessarily equity-rich capital structure.[39] Mr. Murray testified that "one of the primary purposes of managing a capital structure [is] to achieve the lowest reasonable cost without jeopardizing financial stability."[40] Equity financing is more expensive than debt financing and debt costs are at an all-time low, so OPC contends that Spire's conduct is causing ratepayers to pay more than is necessary – perhaps

[38] Tr. vol. 14, p. 811, ll. 18-19.

[39] *OPC's Initial Brief,* p. 34.

[40] Murray Direct, p. 40, ll. 1-14.

$20 to $25 million more annually.[41] Spire admits it is targeting the equity-rich capital structure approved by the Commission in its last rate case.[42]

Dr. Won recommended the use of Spire Missouri's own capital structure, consisting of 54.28% equity and 45.72% long-term debt. This is the same capital structure recommended by Spire's expert, Adam Woodard. Dr. Won testified that OPC's recommendation is entirely inappropriate.[43] The use of a corporate parent's capital structure in ratemaking is determined by analysis of four factors:[44]

1. Whether the subsidiary utility obtains all of its capital from its parent, or issues its own debt and preferred stock;

2. Whether the parent guarantees any of the securities issued by the subsidiary;

3. Whether the subsidiary's capital structure is independent of its parent (i.e., existence of double leverage, absence of proper relationship between risk and leverage of utility and non-utility subsidiaries); and,

4. Whether the parent (or consolidated enterprise) is diversified into non-utility operations.

[41] *OPC's Initial Brief,* pp. 35-36, *quoting* Murray Direct, pp. 50, 53, 40; and Tr. vol. 14, p. 817, l. 8, to p. 819, l. 8; p. 837, l. 12, to 838, l. 5; p. 819, ll. 9-11;

[42] *Id.,* pp. 34-35.

[43] Won Rebuttal, p. 41, ll. 1-3.

[44] *Id.,* ll. 7-15.

Dr. Won testified that none of these factors supports OPC's position.[45] Spire Missouri issues its own debt, which is not guaranteed by Spire, Inc.[46] There is no double leverage or any other inappropriate entanglement with Spire, Inc.[47] While the Spire family of companies is engaged in a small amount of non-regulated activity, it cannot be said to have diversified into non-utility operations.[48] Spire Missouri raises its own debt capital and so its own capital structure is the one that should be used for ratemaking.[49]

OPC argues that the Spire group of companies is engaged in a scheme whereby Spire Missouri's ratepayers indirectly subsidize the group's unregulated activities.[50] According to OPC, the scheme works like this: Spire Missouri maintains an equity-rich capital structure and its unregulated affiliates are thereby enabled to carry more debt than they otherwise could.[51] There should be an inverse relationship between business risk and debt capacity, so riskier entities have a harder time borrowing money.[52] Yet Spire's more risky affiliates have less equity and more debt than Spire Missouri.[53] The cost of their debt is paid by contributions from Spire Missouri and its other utility affiliates.[54]

Staff does not agree with OPC's argument that Spire Missouri is managed for the benefit of its parent.[55] Spire Missouri's capital structure is consistent with the

[45] *Id.,* ll. 16-17.

[46] *Id.,* ll. 17-20.

[47] *Id.,* p. 41, l. 21, to p. 42, l. 1.

[48] *Id.,* p. 42, ll. 1-2.

[49] *Id.,* p. 40, ll. 15-16; Adam Woodard at Tr., vol. 14, p. 715, ll. 16-20.

capital structure ratios maintained by, or authorized for, other natural gas utilities,[56] while OPC's recommended common equity ratio of 47.36 percent is much lower than the average of its natural gas proxy group's common equity ratio of approximately 51 percent.[57] The facts just don't support OPC's capital structure conspiracy theory.

Should Short-term Debt be included?

OPC seeks to include an amount of short-term debt in Spire's ratemaking capital structure. OPC states:

> The proper, just, and reasonable capital structure to be used for the purpose of setting Spire Missouri's allowed rate of return is comprised of 45.00% common equity, 48.00% long-term debt and 7.00% short-term debt. This is the only capital structure recommendation that directly addresses the fact that Spire Missouri's capital structure consisted of approximately 7% short-term debt for 19 out of the 20 months that make up the combined test-year and true-up period.[58]

Staff and Spire oppose OPC's position.

The rule is that short-term debt should be included in a utility's capital structure only to the extent that the amount of short-term debt exceeds the amount of short-term

[50] *OPC's Initial Brief,* pp. 36-37.

[51] *Id.*

[52] *Id.,* p. 40; *quoting* Murray Surrebuttal, p. 8, ll. 17-18.

[53] *OPC's Initial Brief,* p. 40.

[54] Murray Direct, p. 41, ll. 15-19; *quoting Moody's Credit Opinion on Spire Missouri, April 1, 2021:* "The roughly $31 million of annual parent level interest expense is essentially a fixed obligation that is generally serviced by the utilities, since the unregulated net income and distributable cash of Spire Inc.'s other unregulated businesses, such as Spire Marketing, can be more volatile, less certain and insufficient to service the debt."

[55] Won Rebuttal, p. 40, ll. 8-12.

[56] *Id.,* ll. 17-18.

[57] *Id.,* ll. 18-20.

[58] *OPC's Initial Brief,* p. 7.

assets.[59] Spire has shown that the average of all of its short-term assets exceeded short-term debt after taking into consideration the funding of $250 million of new long-term debt during the test year.[60] OPC contends that, by paying down its balance of short-term debt just before the end of the true-up, Spire improperly manipulated its financing to the detriment of its ratepayers.[61] Yet this very maneuver was approved by the Commission in Spire's last rate case.[62] That settles the matter so far as Staff is concerned.

Conclusion:

Staff urges the Commission to adopt the recommendations of Staff's expert financial analyst, Dr. Seoungjoun Won, including a ROE of 9.37%, within a range of 9.12% to 9.62%, the use of Spire Missouri's own capital structure, consisting of 54.28% equity and 45.72% long-term debt, and the exclusion of short-term debt.

8. Cash Working Capital:

Should the Commission follow the Office of Public Counsel's income tax calculation in Cash Working Capital?

OPC's contention that the expense lag for the income tax component of Cash Working Capital ("CWC") should be 365 days since Spire makes no income tax

[59] *Id.,* p. 15; Tr. vol. 14, p. 799, ll. 12–17 and p. 830, ll. 10–14.

[60] Woodard Surrebuttal, p. 17.

[61] *OPC's Initial Brief,* p. 20: "This long-term debt issuance and argument is a blatant attempt to manipulate the Company's debt balances for ratemaking purposes as demonstrated by repeated behavior"; p. 32: "This allows the Company to have rates set using just long-term debt costs – which is generally more expensive than short-term debt – after which the Company goes back to using short-term debt to finance up to 10% of all its capital needs."

[62] ***In the Matter of Laclede Gas Co.,*** Case Nos. GR-2017-0215 and GR-2017-0216 (***Amended Report and Order,*** issued March 7, 2018), p. 42.

payments is incorrect. If Spire does not make income tax payments, the only logical way to calculate the federal and state income tax effect on CWC is to change the dollar amount to zero, not the payment dates. The timing and date Spire pays to federal and state taxing authorities does not change, only the amount.

OPC acknowledges Spire's revenue requirement must include current income tax expense due to normalization rules.[63] However, OPC fails to follow these same IRS normalization rules when it attempts to recoup the income tax expense in Spire's revenue requirement from CWC. In Staff's brief, Staff describes a case that mirrors this case.[64] In the case, the Commission Staff reduced the utility's CWC to account for the accelerated depreciation treatment the Company used to reduce income tax expense. Staff and the Company requested a Private Letter Ruling ("PLR") from the IRS. In that PLR, the IRS stated, "[i]n general, taxpayers may not adopt any accounting treatment that directly or indirectly circumvents the normalization rules."[65]

Whether Spire has paid or will pay income taxes has no effect on the timing of the due date of those taxes, just the amount, and any adjustment to CWC should only be to the amount, if any, and not to the timing. In addition, calculating CWC the way OPC proposes violates the IRS' normalization rules.

--Ron Irving.

[63] Exhibit 209, Direct Testimony of John S. Riley, P. 9-10.

[64] Exhibit 413, *Staff's Initial Brief,* pp. 26-27; describing ***App. Of Va. Elec. & Power Co.,*** Hearing Examiner Report at *18, PUE-2013-00061, 2014 WL 10191322 (Va. S.C.C., Jan. 31, 2014).

[65] Id. (citing 26 C.F.R. § 1.46-6)

13. Incentive Compensation:

To what extent should incentive compensation be included in rates?

There are two issues, as follows:

a. Should the costs of Spire's Annual Incentive Plan ("AIP") be included in base rates?

b. Should the two new metrics Spire implemented in the fall of 2018 be included in base rates?

"Expenses included in the calculation of a utility's revenue requirement are those determined to be reasonable in amount and necessary for and related to the provision of utility service or in some way benefit customers."[66] Rates must be sufficient to cover the utility's operating expenses and capital costs.[67] The Commission historically allows the recovery in rates of incentive compensation expense to the extent that it is paid for purposes beneficial to ratepayers, that is, to reduce costs or improve efficiency and not

[66] Lowell E. Alt, Jr., ***Electric Utility Rate Setting: A Practical Guide to the Retail Rate-Setting Process for Regulated Electric and Natural Gas Utilities,*** self-published, 2006, 2013, kindle edition: location 598.

[67] ***Federal Power Commission v. Hope Natural Gas Co.,*** 320 U.S. 591, 603, 64 S.Ct. 281, 288, 88 L.Ed. 333, __ (1944): "From the investor or company point of view, it is important that there be enough revenue not only for operating expenses, but also for the capital costs of the business." ***State ex rel. Martigney Creek Sewer Co. v. Public Service Commission,*** 537 S.W.2d 388, 395 (Mo. banc 1976): "In ***State ex rel. Southwestern Bell Telephone Co. v. Public Service Commission,*** 262 U.S. 276, 43 S.Ct. 544, 67 L.Ed. 981 (1923), PSC disallowed $174,048.60 expenses paid by Southwestern Bell to A.T.&T. as rents for various items pursuant to a customary form of contract entered into by A.T.&T. and its subsidiaries. The court reversed the PSC, quoting ***State Public Utilities Commission ex rel. Springfield v. Springfield Gas & Electric Co.,*** 291 Ill. 209, 234, 125 N.E. 891, 901 (1919): '(T)he commission is not the financial manager of the corporation, and it is not empowered to substitute its judgment for that of the directors of the corporation; **nor can it ignore items charged by the utility as operating expenses, unless there is an abuse of discretion in that regard by the corporate officers.'**" Emphasis added.

to enhance shareholder value.[68] Incentive compensation is a sort of bonus, payable to an employee to the extent that various defined conditions and measures (“metrics”) are met.[69]

Spire maintains both short-term (“AIP”) and long-term (“EIP”) incentive compensation plans.[70] Staff recommends exclusion from rates of all Spire’s long-term incentive compensation expense because the awards are earnings-based.[71] Earnings-based incentive compensation benefits only shareholders.[72]

Spire’s short-term incentive compensation program provides an annual cash payout to eligible employees based upon metrics within four areas: corporate performance, business unit performance, individual performance, and team unit performance.[73] Staff also recommends exclusion of the expense associated with the corporate performance component in Spire’s short-term plan because it, too, is earnings-based.[74]

Spire has introduced two new metrics within the business unit performance area.[75] Staff recommends their inclusion in base rates.[76] The metrics in question are

[68] *See* cases collected at p. 29, fn. 112, of *Staff’s Initial Brief.*

[69] *See The Complete Introduction to Incentive Compensation for Sales* at anaplan.com, accessed on September 15, 2021.

[70] *Staff’s Revenue Requirement Cost of Service Report,* pp. 66-68

[71] *Id.,* p. 66, ll. 14-15.

[72] *See* cases collected at p. 29, fn. 112, of *Staff’s Initial Brief.*

[73] *Staff’s Revenue Requirement Cost of Service Report,* p. 66, ll. 13-14 and 18-21.

[74] *Id.,* ll. 15-17.

[75] *Id.,* ll. 13-14.

[76] *Id.,* p. 67, ll. 28-30.

utility contribution margin and utility adjusted O&M per customer.[77] The former focuses on the expansion of Spire's customer base and the latter focuses on reducing operating and maintenance expenses.[78] Because both measures benefit ratepayers, Staff supports their inclusion in rates.[79] Staff finds itself aligned with Spire in opposition to OPC on this issue.

OPC is opposed to including any incentive compensation in rates, arguing that such would constitute a double recovery because a properly-designed incentive compensation program should pay for itself through the savings it produces, that is, positive regulatory lag.[80] OPC's position is fallacious and should be rejected.

OPC states:

> no party is arguing for the discontinuation or modification of Spire's incentive compensation plans. Instead, the argument presented comes down to how to **pay** for these plans. This is important because Spire (and likely Staff) will almost certainly attempt to justify the cost recovery for these plans based on the benefit the plans generate for customers. **Any argument based on the benefits of these plans is wholly and completely irrelevant.** The fact that Spire's customers will ultimately benefit from these plans should not be used to justify double-recovery of the cost of the plans (emphasis in original).[81]

OPC emphasized a portion of the above paragraph because it no doubt considers it to be an important point. Staff considers the emphasis appropriate because it is frankly astonished that OPC would make this contention.

[77] *Id.,* ll. 21-25.

[78] *Id.,* ll. 25-30.

[79] *Id.*

[80] *OPC's Initial Brief,* p. 70.

[81] *Id.*

As noted, the Commission has a long history of allowing rate recovery of discretionary expenditures beneficial to ratepayers.[82] OPC ignores that history. Additionally, while utility expenses are assigned to ratepayers or shareholders depending on their nature, utility revenues belong to the shareholders, as OPC's witness well knows.[83] What OPC is really saying is that the cost of the incentive compensation driven by the two metrics in question should be assigned to the shareholders. However, that would be inequitable because, as already noted, these programs benefit ratepayers. Since these programs will save the ratepayers money, it is just and reasonable that the ratepayers should pay for them.

Nor is OPC's claim of double recovery justified. Utilities typically engage in efficiency programs following a rate case in order to maximize returns. Do those increased returns then belong to the ratepayers? Are they a double recovery? OPC knows its position is nonsense.

--Kevin A. Thompson.

15. Capitalized Overheads:

Is Spire in compliance with the Uniform System of Accounts in its capitalization of construction overheads?

[82] *See* cases collected at p. 29, fn. 112, of *Staff's Initial Brief.*

[83] *See* ***Hope Natural Gas,*** *op.cit.*

Staff contends that Spire is not in compliance with the Uniform System of Accounts ("USOA") with respect to capitalized overheads.[84] Staff and OPC are aligned against Spire on this issue.[85]

Capitalized overheads are costs, indirectly related to a capital project, that the utility has elected to capitalize rather than to expense.[86] If capitalized, the overheads are considered to be part of the original value of the asset and are recovered through depreciation over its life.[87] The unrecovered portion of the overheads is part of rate base and the shareholders earn a return on it.[88]

Staff was not able to audit Spire's capitalized overheads due to the complexity of Spire's accounting system and, therefore, cannot determine whether or not Spire is in compliance with the USOA.[89] Spire argues that it provided its general ledger to Staff and that the general ledger contains transaction level support for these costs, including each and every detail of every transaction.[90] In this rate case, Spire has the burden of proof, which includes the burden of producing evidence and the risk of non-

[84] *Spire's Initial Brief,* p. 22.

[85] *Id.*

[86] *Staff's Revenue Requirement Cost of Service Report,* p. 31, ll. 7-9; *see also* www.investopedia.com, *q.v.*: "A capitalized cost is an expense that is added to the cost basis of a fixed asset on a company's balance sheet. … Capitalized costs are not expensed in the period they were incurred but recognized over a period of time via depreciation or amortization." Accessed September 16, 2021.

[87] www.investopedia.com, *op.cit.*

[88] *Staff's Revenue Requirement Cost of Service Report,* p. 31, ll. 10-20.

[89] *Id.,* p. 32, ll. 19-28. *See also* Young Surrebuttal, p. 14, ll. 7-10: "Unfortunately, Spire does not have documentation that is able to show the amount of overhead costs in its plant accounts or the bases for the processes used to account for them. Staff's position is that this information is necessary in order to determine whether the provisions of the USOA in this regard are being complied with."

[90] *Spire's Initial Brief,* pp. 29-30.

persuasion.[91] Spire cannot simply rest on its assertions that Staff is wrong; **Spire must produce evidence that shows the Commission that it is in compliance with USOA**. Spire has not done that and so, Spire necessarily loses on this issue.

In response to Mr. Krick's meaningless insistence that Spire's methods have been consistent, Staff witness Young testified:

> Q. Does using a consistent approach prove compliance with the USOA?
>
> A. No, maintaining an approach that has been used for decades has no relationship to the issue of compliance with the USOA. It appears Mr. Krick is implying that Spire's capitalization of overheads has been approved by the Commission in the past. However, I am unaware of capitalized overheads being raised as an issue in any Spire, or any of Spire's predecessors, proceeding until Spire's ISRS Case Nos. GO-2019-0115 and GO-2019-0116.[92]

To the extent that Staff was able to audit Spire's records, Staff's auditor noted several instances of non-compliance.[93] For example, in response to a data request asking for test year overhead employee costs and the related benefits that were capitalized, Spire stated it does not maintain records of such information.[94] It is frankly astonishing that Spire was unable to produce such fundamental accounting records. Other specific examples of non-compliance are detailed in Staff's *Initial Brief.*[95]

As a remedy, Staff has asked the Commission to order Spire, on a going-forward

[91] § 393.150.2, RSMo.; ***Kinzenbaw v. Director of Revenue,*** 62 S.W.3d 49, 53 (Mo. banc 2001): "When courts discuss the burden of proof, there are two components: the burden of producing (or going forward with) evidence and the burden of persuasion."

[92] Young Surrebuttal, p. 13, ll. 7-12.

[93] Young Surrebuttal, p. 15, l. 4, to p. 19, l. 18, cataloging instances of Spire's non-compliance.

[94] *Staff's Revenue Requirement Cost of Service Report,* p. 32, ll. 19-20.

[95] *Staff's Initial Brief,* pp. 37-41.

basis, to cease capitalizing non-operational overhead costs,[96] or as an alternative, order Spire to cease capitalizing costs received from Spire Services, until such time that Spire can demonstrate its compliance with the USOA.[97] Spire responds that any restriction to Spire's ability to capitalize overheads would cause an immediate increase to Spire's revenue requirement in the neighborhood of $100 million because costs that are currently being capitalized would instead be expensed and recovered on an annual basis.[98] By that argument, Spire attempts to hold the Commission hostage. The Commission cannot allow a utility to ignore its rules on the grounds that enforcing compliance would be too expensive. The Commission has the authority to order deferral of any extraordinary costs that may be incurred in requiring Spire to comply with the law.

--Kevin A. Thompson.

16. Net Operating Loss ("NOL") Carry-forward:

How should Spire's Net Operating Loss ("NOL") carry-forward be treated?

OPC devotes a significant time in its initial brief referring to "buckets", "piles", and "pools" of "free money" when addressing this issue,[99] but fails to note that the treatment that Staff and Spire Missouri are recommending is consistent with Internal Revenue

[96] Non-operational overhead costs are employee benefits, shared service, and administrative and general costs. Tr. Vol 10, p. 162, l. 21, to p. 163, l. 4.

[97] Young Rebuttal, p. 5, ll. 7-10; Young Surrebuttal, pp. 12-21.

[98] *Spire's Initial Brief,* pp. 28-29.

[99] Initial Brief of the Missouri Office of the Public Counsel, pp. 96 of 232 to 109 of 232.

Code regulations, and Private Letter Rulings ("PLR"s)[100] issued by the Internal Revenue Service ("IRS") that Spire Missouri has reasonably relied on.[101] Further, OPC's attempt to portray the situation as one where "free money" is being left out of the ratemaking process, to the detriment of ratepayers, is not accurate.[102]

Utility income tax expense, for ratemaking purposes is divided into two categories: (1) current income tax expense, which is paid in cash by the utility to taxing authorities, and (2) deferred tax expense, which represents amounts of free cash flows to the utility that is provided by customers related to the normalization of certain income tax deductions.[103] OPC mistakenly, in its brief and testimony, has conflated these two categories when arguing that this is free cash generated due to the inclusion of income taxes in the revenue requirements that are not being paid to the taxing authorities.[104]

To clarify, Spire Missouri is able to use book-to-tax timing differences to avoid paying current income taxes, which means the Accumulated Deferred Income Taxes ("ADIT") balance represents the amount of cash Spire Missouri has avoided spending on its past income tax liabilities and is considered a cost-free loan from the federal

[100] Ex. 50.

[101] Tr. Vol. 13, pp. 629-630: "Q: Good morning, Mr. Felsenthal. My name is Jamie Myers with staff counsel. A: Hello. Q: You reference some PLRs in your testimony; is that correct? And by PLRs, I mean IRS private letter rulings. A: Yes. Q: And so even if a private letter ruling is not to be used as legal precedent, would a reasonable account read and rely on an IRS private letter ruling in advising a tax client? A: Yes. Definitely. Let me just say that even though it says on each PLR that they are only applicable to taxpayer who requested it. They public these, they huddle on this and – before releasing them. It is the agency's interpretation of the regulations – of the IRS rules and regulations and they are, if nothing else, constructive."

[102] Initial Brief of the Missouri Office of the Public Counsel, pp. 96 of 232 to 109 of 232.

[103] Ex. 140, p. 7.

[104] Initial Brief of the Missouri Office of the Public Counsel, pp. 96 of 232 through 109 of 232.; Ex. 140, pp. 7-8.

government.[105] Staff witness Matthew Young explained, when questioned by OPC's counsel, that the federal government specifically designed for these book-to-tax timing differences to create cash flows to companies so the companies would retain money and reinvest it in their companies.[106] Further, these book-to-tax timing differences, so long as they are temporary,[107] will reverse and Spire Missouri will be liable for these taxes in the future.[108] In short, this is not free money that Spire Missouri gets to keep in perpetuity.

Similar to other utilities in Missouri,[109] and similar to utilities across the country,[110] Spire Missouri's is currently experiencing a net operating loss ("NOL"). Spire Missouri's NOL Asset, which is simply the balance of the accumulation of all of Spire Missouri's prior NOLs, represents a tax benefit that Spire Missouri has not yet realized at this date,

[105] Ex. 125, p. 6.

[106] Tr. Vol 13, pp. 645-647. "Q: It is safe to say that based on this schedule that Staff has effectively calculated that the Company would be paying somewhere in in the range of $32million in income tax after taking the book tax timing related depreciation differences into account? A: For ratemaking purposes, that's the number we [Staff] came up with after a select number of tax timing differences including depreciation. Well, let me back out. After a select number of tax timing differences were flowed through the customers, with the exception of the accelerated depreciation on here, which does not flow through to customers. Q: So the Company – you are expecting the Company to pay $32 million, roughly, to the IRS? A: No. Q: And why not? A: Because the federal government, when they set up the Internal Revenue Code through the United States Congress and maybe some rules promulgated by the IRS, they intended for these timing differences to create cash flows to companies so they could retain it and reinvest in the Company. Q: So you expect that all deductions the Company are going to take are related to book tax timing differences. A: Yes. Q: Even though you've only included 8 million in this line? A: Yes. That is just the timing difference that related to accumulated depreciations. There are many other timing differences that are on Spire's tax returns."

[107] Excess ADIT is the balance of book to tax timing differences that due to changes in laws that changed Federal and State Corporate Income tax rates, resulted in temporary ADIT becoming excess ADIT. See Ex. 125, p. 8.

[108] Id. p. 649.

[109] Tr. Vol. 13, pp. 614-615.

[110] Id. pp. 657-658.

and, therefore, it is appropriate, and in many instances required by IRS normalization rules, that Spire Missouri's NOL asset be treated as an offset to Spire Missouri's total ADIT.[111] The consequences of Spire Missouri not following the IRS normalization rules are serious. Such a violation would result in Spire Missouri being forbidden in perpetuity from claiming accelerated depreciation on every future income tax return, and would eliminate the benefit ratepayers presently receive from reduction to rate base for interest free loans that ADIT currently provides.[112]

OPC, as an alternative to its primary recommendation that the Commission not offset Spire Missouri's total ADIT by the NOL asset, has suggested the Commission just order a tracker. OPC even went as far as to falsely say at the evidentiary hearing in this matter that "Staff says that the appropriate mechanism for dealing with this issue is to create that tracker",[113] which Staff has not said, nor does Staff agree with. However, Staff does agree with Spire Missouri's witness Kuper's comments made at the same evidentiary hearing in this matter, when Mr. Kuper stated that he did not believe a tracker would produce any benefit, and may potentially be redundant.[114] Furthermore, Staff's witness explained the federal government's intent was to create a source of cost-

[111] See Ex. 50.

[112] Ex. 10, p. 48; Treas. Reg. § 1.46-6(f)(4).

[113] Tr. Vol 13, pp. 595.

[114] Tr. Vol 13, pp. 613-614. "Q. What about Mr. Clizer's tracker, wouldn't that account? A: I think it is already being accounted for through the ADIT offset. So as each year progresses, depending on what yo[ur] ADIT offset versus what your NOL carryforward is, you know, those numbers are going to be adjusted essentially on the annual basis, on a go forward period. So that is going to essentially be part of the equation. When – so when you get to the next rate you, you know, we will have an ADIT offset number and we'll presumably still an NOL carryforward, maybe that number will be down to zero. So I don't feel that, you know, a tracker would produce any benefit with respect to this."

free funds for taxpayers through tax deductions and all parties have provided a thorough explanation of the IRS's prohibition of prematurely passing certain tax benefits to customers through utility rates. Even if the tracker recommended by OPC did not violate the IRS's normalization requirements, passing the tax benefits to customers via an income tax tracker would certainly undermine the federal intent to provide a source of funds to Spire Missouri.

Again, Staff's position on this is straightforward. Staff acknowledges that Spire Missouri has a NOL asset and recommends that Spire Missouri's NOL asset balance should be included in Spire Missouri's ADIT and excess ADIT. Staff also acknowledges that recognition of a NOL tax asset in rate base is, in some circumstances, mandated by IRS's normalization requirements.[115] Staff's calculated ADIT balance for Spire Missouri represents the accumulated cash consequences of tax benefits Spire Missouri has realized from book-to-tax timing differences. Because the NOL asset represents a tax benefit that Spire Missouri has not realized, it is appropriate to include this tax asset as an offset to Spire Missouri's total ADIT and excess ADIT.

--Jamie Myers.

[115] Ex. 140, p. 8.

19. Corporate Allocations and Affiliate Transactions:

Should a significant portion of Spire Missouri's test year operating expenses be disallowed on the grounds that they should properly be charged to Spire Missouri's corporate parent and affiliates?

I. Spire Inc. serves as a quasi-service company for its affiliates, including Spire Missouri.

OPC's conclusion that "Spire Missouri is currently being charged for the costs that it incurred to produce goods and services that were used by Spire Inc. [and] Spire Missouri is therefore providing a financial advantage to Spire Inc. [and b]ecause Spire Missouri is providing Spire Inc. a financial advantage as defined by the Commission's affiliate transaction rule, Spire Missouri is engaging in a prohibited transaction"[116] is not supported by the facts of this case nor is it an accurate application of the Commission's affiliate transactions rule for gas utilities, 20 CSR 4240-40.015.

First, what is Spire Inc.? For OPC's conclusion to be true, Spire Inc. would have to be an entity with a purpose that is wholly separate and apart from Spire Missouri. However, this is not the case. In the case of Spire Missouri, Spire Services Inc. acts as a clearinghouse for provision of goods and services to and from Spire Inc. affiliates.[117] The existence and use of Spire Services Inc. and Spire Inc. provides efficiencies that Spire Missouri would lack if it were a standalone entity that was required to provide or acquire every good and/or service itself.[118] From Staff's review, Spire Services Inc. and

[116] *Initial Brief of the Missouri Office of Public Counsel,* p. 110 of 232.

[117] Ex. 135, p.9.

[118] *Id.* pp. 10-11.

Spire Inc. do not currently appear to have a material corporate purpose separate and apart from the operations and lines of businesses of their regulated and non-regulated affiliates.[119] OPC's implication that Spire Inc. should be assigned and retained some level of corporate costs on account of its very existence is not valid, nor is it supported by the facts in this case.

Further, the Commission's affiliate transactions rule acknowledges that certain shared services, which are allocated to various affiliates, have economies of scale and, therefore, the provision of those particular services is not subject to the (2)(A) Standards[120] provision of the rule that OPC cites. Such services are defined as "corporate support"[121] services in the rule, and are exempted by the (2)(B) Standards[122] section of the same rule. Seemingly, OPC wants the Commission to ignore the existence and application of the definition of "corporate support" and the (2)(B) Standards of the affiliate transactions rule, and even says as much in its initial brief when it states the following, "The Commission's ATR [affiliate transactions rule] contains eleven separate subsections and covers more than two pages in the published code of state regulations. Fortunately, our discussion will only require consideration of a very small portion of the whole rule. That portion is subsection (2)(A), which sets out the prohibition on provision of a financial advantage by a utility to an affiliate entity."[123]

[119] Ex. 117, p. 6.

[120] 20 CSR 4240-40.015(2)(A).

[121] 20 CSR 4240-40.015(1)(D).

[122] 20 CSR 4240-40.015(2)(B).

[123] *OPC Initial Brief,* p. 111 of 232.

As further articulated in its initial brief, Staff suggests multiple sections of the Commission's affiliate transactions rule for gas utilities are relevant and applicable to this case.[124] In considering all relevant sections of the rule, and the results of Staff's audit, Staff's position remains that the current cost assignments and allocation procedures in effect for Spire Missouri and its affiliates are reasonable and result in the equitable compensation to Spire Missouri for affiliated services it provides.[125]

II. Spire Missouri has a Commission-approved Cost Allocation Manual, consistent with the Commission's affiliate transactions rule for gas utilities.

Ostensibly, another provision of the Commission's affiliate transactions rule for gas utilities that OPC wants the Commission to not consider is the requirement that a gas utility have a Commission-approved Cost Allocation Manual ("CAM").[126] Nor does OPC lay any credence on the fact that Spire Missouri has a Commission-approved CAM.[127] The fact that Spire Missouri has a Commission-approved CAM is not only important because it is a provision of the Commission's rule, it is also important because, by rule, the content of the CAM document must set "forth the cost allocation, market valuation and internal cost methods"[128] and contain the "criteria, guidelines and procedures it will follow to be in compliance with the rule". [129] To the extent that Spire

[124] *Staff's Post-Hearing Brief,* pp. 44-49.

[125] Ex. 117, p. 6.

[126] 20 CSR 4240-40.015(3)(D): "In transactions involving the purchase of goods or services by the regulated gas corporate from an affiliated entity, the regulated gas corporation will use a commission-approved CAM which sets forth the cost allocation, market valuation and internal cost methods."

[127] *See* Ex. 228.

[128] 20 CSR 4240-40.015(3)(D).

[129] Ex. 228.

Missouri and its affiliates are properly allocating in accordance with Spire Missouri's currently Commission-approved CAM, which Staff believes is the case,[130] there is no grounds to recommend or support the Commission ordering Spire Missouri a large disallowance to account for costs that that have been properly allocated between and amongst Spire Missouri and Spire Inc.

III. Conclusion:

Staff found no evidence in the course of its audit during this general rate case that Spire Inc. or Spire Service Inc. currently have a material purpose separate and apart from the operations and lines of businesses of their regulated and non-regulated affiliates, and no full-time employees or assets are assigned to either entity.[131] As such, Staff believes it would be inappropriate to require that Spire Inc. or Spire Services Inc. should be arbitrarily assigned to retain some level of corporate costs beyond the discrete adjustments Staff has recommended in the course of its audit. It is Staff's position that the current costs assignment and allocation procedures in effect for Spire Missouri and its affiliates are reasonable and result in equitable compensation to Spire Missouri for affiliated services it provides.[132]

--Jamie Myers.

[130] Tr. Vol. 11, p. 405; Ex. 117, p.7.

[131] Ex. 117, p. 2

[132] *Id.* p. 7. *See also* Ex. 228.

24. Depreciation:

What depreciation rates should the Commission order?

As previously stated, the Commission should order the use of the depreciation rates found in *Staff's Revenue Requirement Cost of Service Report*, with the exception of accounts related to Smart Meters and Smart Meter Installation.

In its initial brief, OPC points out multiple instances of Staff changing its position from rebuttal to surrebuttal or from surrebuttal to position statements.[133] OPC is correct that Staff does make position changes as a case progresses; the natural consequence of obtaining new and relevant information is to update a position accordingly.[134]

OPC's initial brief also points out that many of Staff's proposed depreciation rates are similar to those proposed by Spire.[135] Staff witness David Buttig stated in Staff's *Report:*

> For each account, Staff estimated the average service life and net salvage rate. Where there was adequate data to support it, Staff's recommendation is informed by statistical analysis of plant retirements as described below. For accounts that did not have adequate data to produce a reasonable result using statistical analysis, Staff relied on its engineering experience, informed judgement, and previous cases to prepare recommended rates.
>
> Staff used available data to prepare estimates of service life and net salvage for each account. These sources include the depreciation study submitted by Spire that was prepared by Gannet Fleming, spreadsheets submitted along with the study, Spire's response to data requests and previous Commission orders.[136]

[133] *OPC Initial Brief,* p. 158.

[134] Ex. 128, Surrebuttal Testimony of David T. Buttig, p. 8, ll.13-15. After reviewing OPC's rebuttal testimony, Staff was able to update/correct its position related to Smart Meters.

[135] *OPC Initial Brief,* p. 158.

[136] Ex. 101, *Staff's Revenue Requirement Cost of Service Report,* p. 113, ll. 4-13.

OPC is correct that Staff used information provided by Spire to develop its proposed depreciation rates, but Staff also used its expertise and experience to adjust depreciation rates where information was lacking. Using information provided by Spire as the starting point of position development does not negate Staff's final proposed rates.

--Casi Aslin.

26. Ultrasonic Meter Infrastructure:

What amounts should the Commission allow Spire to book to FERC accounts 381.1 and 381.2?

I. Staff's recommendation for recovery is consistent with information Spire Missouri provided and is rooted in the Commission's rule requirements.

Staff's recommendation that the Commission disallow 26% of Spire Missouri's cost of meters and installation (booked in FERC subaccounts 381.1 and 382.2) is consistent with the testimony and information Spire Missouri provided in the course of this case, and with the Commission's rule regarding meter testing, 20 CSR 4240.10.030(19).

While in its initial brief Spire Missouri contends that Staff's and OPC's recommendations are not appropriate,[137] as noted in the testimonies of Staff witness J Luebbert and OPC witness Geoff Marke, Spire Missouri did not provide any significant supporting testimony or information in its direct case regarding its meter

[137] Spire's Initial Post-Hearing Brief, pp. 37-41.

replacements,[138] which left Staff and other parties unable to provide the Commission with a reasonable recommendation in rebuttal other than to exclude all of the costs associated with Spire Missouri's ultrasonic meters.[139]

It was only after Staff conducted discovery, and attended a technical conference on June 9, 2021, that Staff was able to gather information from Spire Missouri regarding its meter replacements.[140] By refusing to provide support for its direct filed case, Spire Missouri caused unnecessary delays and extra discovery that has hindered the parties in their reviews of Spire Missouri's request.[141]

Again, Staff does not object to Spire Missouri's inclusion of cost of new ultrasonic meters to the extent that service was already disconnected, the existing meter needed to be replaced, and the alternative replacement option would be to purchase a new meter.[142] However, Staff and other parties need Spire Missouri to provide information regarding its meter replacements so that Staff and other parties are able to provide informed recommendations to the Commission regarding recovery in subsequent cases.

[138] Ex. 133, pp. 2-4.; Id. p. 4, "the Direct testimony provided by Spire Missouri to support the inclusion of the costs to replace existing metering equipment with new advanced metering equipment in this case was limited to the following two sentences in Mr. Weitzel's Direct testimony, 'Spire is installing advanced metering technology to improve the metering quality and provide enhanced safety. These investments in new technology allow Spire to provide smarter, safer, and more efficient service to our customers'".

[139] See Ex. 115.

[140] See Exs. 115 and 133.

[141] Ex 133, p. 4.

[142] Ex. 133, p. 4.

Spire Missouri Needs to Provide this Commission and Stakeholders with Additional Information on Meter Replacements.

To address Spire Missouri's deficiency in providing information, Staff recommends the Commission order Spire Missouri to file quarterly reports that detail and describe the changes to Spire Missouri's meter replacement strategy for each Missouri service area as well as justification for any changes in replacement strategy. Staff further recommends the justification should include, but certainly not be limited to, cost benefit analyses for changes in replacement strategy, alternative approaches Spire Missouri considered, and potential customer impacts of changes. When asked at the evidentiary hearing on Tuesday, August 3, 2021, Spire Missouri's witness Rieske stated that Spire Missouri would be willing to provide the Commission, and parties, with additional information on its meter replacements.[143]

--Jamie Myers.

30. Rate Adjustments to Account for Weather, Conservation, or Both ("WNAR/RNA"):

The Commission should adopt Staff's proposed Rate Normalization Adjustment ("RNA").

[143] See Tr. Vol 11, pp. 251-252. "Q: Mr. Rieske, in response to several different questions from the Bench, you provided information stating that Spire had done various data collection or looked at different information. Is this the type of information that Spire would be willing to file with the Commission going forward? A: So much of the information we have already provided as part of data requests in this case. But I certainly think that we will be willing to have a dialogue around the data that we used to evaluate and make decisions about our meter equipment. Q: So you think Spire would be open to the idea of a quarterly report that would be filed with this Commission? A: I would support the idea of having a quarterly report because I think one of the issues I see here is that we have not had enough dialogue around this matter, and I think it would be an improvement for us to have it."

I. Rate Adjustment Mechanism to account for weather, conservation, or both (Issue 30, responds to Spire's Brief Section III G at 60-63 and OPC Brief at 209-229).

The Commission should adopt Staff's recommended Rate Normalization Adjustment ("RNA") mechanism because Staff is the only party to this case applying the plain meaning of the term "conservation" in Section 386.266.3, RSMo (Supp. 2020), and the RNA is a just and reasonable mechanism that reduces risk due to weather and conservation for both the Company and its ratepayers.

A. The Commission should adopt the plain meaning of the word "conservation" recommended by Staff, not the overly broad meaning proffered by Spire, which improperly includes "all other factors," and not the overly narrow meaning proffered by the Office of the Public Counsel, which improperly attempts to insinuate a subjective intent element into the statute that is not present in the plain language.

The primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue.[144] The courts look to statutory definitions where provided, otherwise they look to the 'plain and ordinary meaning' derived from a dictionary.[145] Where an action of the Commission does not contravene the plain language of an enabling statute, the Court recognizes the General Assembly's broad grant of authority to the Commission consistent with the Commission's mission

[144] *Union Elec. Co. v. Pub. Serv. Comm'n*, 591 S.w.3d 478, 485 (Mo. App. W.D. 2019).

[145] *Union Elec. Co. v. Pub. Serv. Comm'n*, 591 S.w.3d 478, 485 (Mo. App. W.D. 2019) (*citing* § 1.090, RSMo (2016) ("Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.")).

and infers a power the General Assembly intended to vest in the PSC rather than a limitation.[146]

Courts will resort to canons of construction only where the statute is vague or ambiguous because "[w]hen the words [of a statute] are clear, there is nothing to construe beyond applying the plain meaning of the law."[147]

1. Staff's definition of "conservation" is supported by the plain language of the statute.

Section 386.266 is not vague or ambiguous. Section 386.266.3 first requires that weather and conservation adjustment mechanisms account for the "impact on utility revenues of increases or decreases in residential and commercial customer usage" due to weather or conservation or both.[148] Contrary to the arguments in the Brief of the Office of Public Counsel (Public Counsel or OPC), Staff's focus on customer usage in the RNA is not an unlawful reading of the word conservation, it is following the express statutory requirement that any adjustment mechanism must account for "increases or decreases in … usage."[149]

The Commission's decision in Spire' last rate case is inapposite. There, the Commission decided that Spire's proposal to define conservation as factors other than

[146] *Matter of Amendment of Commission's Rule Regarding Applications for Certificates of Convenience and Necessity*, 618 S.W.3d 520, 525 (Mo. banc 2021).

[147] *Union Elec. Co. v. Pub. Serv. Comm'n*, 591 S.w.3d 478, 485 (Mo. App. W.D. 2019) (*quoting State v. Johnson*, 524 S.W.3d 505, 510 (Mo. banc 2017)).

[148] § 386.266.3, RSMo (Supp. 2020).

[149] § 386.266.3, RSMo (Supp. 2020).

weather or conservation was unlawful,[150] In contrast, Staff in this case has carefully reviewed the definition of conservation to determine what does and what does not meet the definition of conservation. Staff relied on the plain meaning of conservation, derived from the dictionary.[151] Staff also testified that while it designed its proposed RNA to account for usage changes due to weather and conservation, it is simply not possible to design a mechanism that completely avoids being affected by other incidental factors.[152] Even under the currently-effective WNAR, which is based primarily on normal weather data and not customer usage, has a weather coefficient that is not completely insulated from customer growth or customer attrition.[153]

Staff's expert witness Michael Stahlman testified that, "There are some factors *that are largely not going to be included* such as if a customer leaves the system."[154] Rate switching would not be included under Staff's rate design, Mr. Stahlman testified, because of the cap in block 1b of its proposal.[155] Similarly, Spire is not protected from

[150] Administrative agencies are not bound by *stare decisis*, nor are Commission decisions binding precedent. *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n*, 120 S.W.3d 732, 736 (Mo. banc 2003).

[151] Exhibit 104 at 38.Section 386.266 does not define conservation. Where Missouri statutes do define conservation, those definitions have included actions taken to reduce costs or energy consumption and actions to use an alternative or renewable energy source (i.e., fuel switching). *See*, *e.g.*, § 640.651, RSMo (2016) (defining "energy conservation measures"); § 260.005, RSMo (2016) (defining "energy conservation").

[152] Tr. 473:13-16.

[153] Tr. at 475:12-19. The evidence in this case is that customer growth and attrition can offset each other. Tr. 474:24-475:2 (in other words, if one customer leaves, but another customer comes onto the system, there is an offsetting effect). Public Counsel adduced no evidence in this case that customer attrition is outpacing customer growth on the Company's system.

[154] Tr. at 465:7-9 (emphasis added).

[155] Tr. at 466:1-12.

fuel switching, again because the Company is subject to the risk of fuel switching in the first block of Staff's proposal.[156]

As for economic factors, Mr. Stahlman testified that, "It depends on what you would define as economic factors" whether or not the RNA would make adjustments for economic factors.[157] Mr. Stahlman testified that there may be "a lot of economic factors"[158] that may fall under the definition of conservation:

> Where economic factors can impact conservation? Sure. If something broadly happens like the natural gas price goes up just on the—would reflect in a customer's bill that could provide incentive for them to invest in energy efficiency devices and the reason why the price could go up for natural gas could be any number of reasons…."

In conclusion, Staff's definition of "conservation" is based on the plain meaning of the word, applying only as broadly as necessary to give effect to the plain intent of Section 386.266.3.

2. Spire defines "conservation" too broadly.

In Spire's previous rate case, the Commission properly rejected Spire's Rate Stabilization Mechanism (RSM) because it proposed to make adjustments for "all variations in average usage per customer (such as, fuel switching, rate class switching, new customers with non-average usage, and economic factors) and not just those limited to weather or conservation."[159]

[156] Tr. 475:3-11. To the extent fuel switching

[157] Tr. 456:19-24.

[158] Tr. 464:24-465:7.

[159] Amended Report and Order at 83, File Nos. GR-2017-0215 and GR-2017-0216 (EFIS No. 594, Mar. 7, 2018).

Just as in the last case, Spire's definition of "conservation" is overly broad. Here, Spire cites no authority for its proposition that conservation encompasses "any other factor inducing changes to the volumes of gas sold."[160]

The Commission should decline to adopt Spire's proposed definition of conservation.

3. The Office of the Public Counsel defines "conservation" too narrowly.

Because the term conservation is unambiguous, the Commission need not resort to any cannons of construction as the Office of Public Counsel argues in its brief.[161] Even if the Commission were to engage in construction, it should not adopt Public Counsel's construction because it leads to absurd results.

Public Counsel argues that a decision to use less gas meets the definition of conservation only when the decision is a "*specific* and *intentional* action taken to **preserve** a natural resource,"[162] (emphasis original), and not a decision to save money.[163] Behold the absurd results reached in Public Counsel's brief under this construction: a shopkeeper with an empty store who turns off the heat is not engaging in "conservation,"[164] nor is a homeowner who turns off the heater because the house is

[160] Exhibit 34 at 29:11-14 (Selinger Direct) (adopted by Exhibit 41 at 23, Weitzel Revenue Requirement Rebuttal).

[161] Brief of OPC at 223-26.

[162] Brief of OPC at 222.

[163] Brie of OPC at 222.

[164] Brief of OPC at 222.

already comfortable because of the outdoor temperature.[165] Under Public Counsel's reading of the statute, the Commission would also have to conclude that customers who purchased better insulation, or a more efficient water heater, or used plastic to cover a drafty window are also not engaging in "conservation" unless the customer's specific intent was to preserve natural gas.

Instead, Public Counsel urges, the Commission must move further up the chain of causation to find out why the shopkeeper's store is empty[166] or why the homeowner is already comfortable.[167] Without moving up the chain of causation and interrogating customers about why they are making the decisions they are making, Public Counsel argues, the Commission has no authority to decide whether customers are conserving natural gas. Public Counsel never explains how the General Assembly intended the Commission to undertake such an inquiry under Section 386.266.3, much less point to any provision in the statute purporting to grant the Commission authority to engage in such an invasive customer inquiry. Worse yet, Public Counsel fails to explain how its standard applies to a customer with dual goals of preserving natural gas and saving

[165] Brief of OPC at 223-24.

[166] A pandemic, in this example. Brief of OPC at 222. In other examples, it is earthquakes, flooding, major fires, social upheaval, pandemics, armed conflicts, riots, looting, cyber-attacks, and other extraordinary events and disasters the Commission has regularly pulled out of automatic adjustment mechanisms under its authority to grant accounting authority orders (AAOs) for extraordinary events. *See*, *e.g.*, File Nos. GU-2021-0276 (Application for AAO for costs related to February 2021 Winter Storm Uri); GU-2021-0275 (same); GU-2021-0149 (same); EU-2021-0283 (same); EU-2021-0274 (same); GU-2021-0146 (AAO to record and preserve costs related to COVID-19); GU-2021-0112 (same); GU-2020-0376 (same); EU-2021-0145 (same); EU-2021-0027 (same); EU-2020-0350 (same).

[167] Because it is warm outside, in this example. Brief of OPC at 223-24.

money. In short, it is Public Counsel's reading of the word conservation, not Staff's, that would lead to absurd results.

Public Counsel also argues that Staff's reading of "conservation" would render the word "weather" mere surplusage. But Public Counsel's argument here fails to cite any record evidence.[168] The relationship between weather and conservation is interrelated and complicated.[169] Public Counsel's rhetorical question and unsubstantiated answer are not evidence.

The remainder of the arguments raised by the Office of the Public Counsel are mere straw men[170] arguments, inaccurately distorting the Staff's position as construing "conservation" to mean "all" factors leading to changes in usage. For example, Public Counsel's Brief mischaracterizes Staff's expert's testimony by inaccurately arguing that Staff defines "**all**" (emphasis original) reductions in usage constitute "conservation."[171] As explained in subsections A.1. and A.2. above, Staff's definition of conservation most certainly does not encompass "all" reductions in usage.

Staff respectfully asks the Commission to glean Staff's argument from Staff's brief, and not from Public Counsel's straw man version of Staff's argument. In doing so,

[168] Brief of OPC at 223-24.

[169] Exhibit 138 at 3 (Stahlman Surrebuttal).

[170] A straw man argument is "[a] tenuous and exaggerated counterargument that an advocate makes for the sole purpose of disproving it." STRAW MAN, Black's Law Dictionary (11th ed. 2019); see also, Andrew J. McClurg, Sound-Bite Gun Fights: Three Decades of Presidential Debating About Firearms, 73 UMKC L. Rev. 1015, 1027 (2005) ("A straw man argument is fallacy of refutation that involves, first, distorting the opposing argument and then attacking the distorted argument, which is a 'straw man' that is easily knocked down.") (citing inter alia David L. Allen & Jane C. Parks, Essential Rhetoric 111-12 (1969)).

[171] Brief of OPC at 221 (citing Tr. 464-465).

the Commission should reject the Public Counsel's overly narrow interpretation of the term conservation.

B. Staff's proposed RNA is just and reasonable because it reduces the risk of under- or over-collecting the Company's revenue requirement as a result of changes in usage due to weather and conservation.

The Commission sets rates that are just and reasonable.[172] Setting just and reasonable rates involves a balancing of utility and ratepayers interests.[173] Section 386.266 furthers this goal, authorizing the Commission to approve periodic rate adjustments to avoid over- or under-collection of a utility's authorized return. One requirement of every adjustment mechanism is that it must be "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity."[174]

Staff's proposed RNA is designed specifically to provide the utility with a sufficient opportunity to earn the fair return on equity that will be ordered in this case. By adopting an RNA, it is more likely that the Company will earn its authorized revenue requirement, and not over-collect or under-collect from its customers as a result of higher or lower than normal usage due to weather or conservation.[175]

An adjustment mechanism under Section 386.266.3 should work both ways to be just and reasonable.[176] Therefore, the Commission should disregard Public Counsel's

[172] § 393.150.2, RSMo (2016); *see also*, § 393.130, RSMo (2016); § 393.140(5), RSMo (2016); .

[173] *State ex rel. Mo. Gas Energy*, 186 S.W.3d 376, 383 (Mo. App. W.D. 2005).

[174] § 386.266.5(1), RSMo (Supp. 2020).

[175] Exhibit 104 at 39 (Staff Class Cost of Service Report) ("This design insulates the company from sales fluctuations associated with deviations in weather-related sales from what is normal, whether driven by the actual weather or by conservation efforts related to weather.").

[176] *See*, *e.g.*, *Office of Public Counsel v. Pub. Serv. Comm'n*, 609 SW.3d 857, 868 (Mo. App. W.D. 2020) (rejecting argument that accounting authority orders are a "one-way street.").

criticism of Staff's proposed RNA that an upward adjustment would result from lower usage after a warmer than normal year. Public Counsel never states the logical next step of its argument, which is that adjustment mechanisms under Section 386.266.3, must only be used to lower rates for customers.[177] Such an argument is unsupportable by the plain language of Section 386.266, which requires that every adjustment mechanism must be "reasonably designed to provide the utility with a sufficient opportunity to earn a fair return on equity."[178]

Public Counsel also ignores the plain language and intent of Section 386.266.3 by complaining that customers will have to pay more collectively when conservation does occur.[179] Section 386.266.3, authorizes adjustments based on changes in usage due to conservation. It would be inconsistent with the statute to require Spire to charge less when its customers collectively conserve more and use less gas, as doing so could disincentivize Spire from pursuing conservation or energy efficiency measures.[180] Individually, Spire customers will still be incentivized to save money by pursuing conservation efforts, even if collectively those efforts lead to a conservation adjustment for residential and SGS customers.

For these reasons, the Commission should find that the evidence on the record supports a finding that Staff's proposed RNA contributes to the goal of setting just and

[177] Brief of OPC at 212-13.

[178] § 386.266.5(1), RSMo (Supp. 2020).

[179] Brief of OPC at 211.

[180] § 386.266.3, RSMo (Supp. 2020).

reasonable rates, and that Staff's proposed RNA is consistent with the purposes of Section 386.266.

C. The Commission should adopt the usage blocks proposed by Staff.

The Commission must adopt Staff's usage blocks. Staff's analysis is based on a lawful understanding of the term conservation.[181] For the Small Gas Service (SGS) class, it is necessary to avoid issues with adjusting rates due to customer rate switching.[182]

The Commission must reject Spire's proposed RNA usage blocks. Spire's proposal is based on its overly broad interpretation of the term conservation, which improperly accounts for "all variations" in customer usage.[183]

Ameren's usage blocks are inapposite. As Spire argues, Ameren has just one general service gas class.[184] The DCA proposed by Staff and adopted for Ameren Missouri was developed through an analysis of Ameren's rate classes, and the RNA proposed by Staff for Spire Missouri was developed through an analysis of Spire's rate classes.[185]

[181] *Supra*, Subsection A.

[182] Tr. 466:1-13.

[183] *Supra*, Subsection A; *compare*, Brief of Spire at 61 ("Spire's review shows that a block break of 30 Ccf would best align with the intent of the RNA, which is to minimize revenue fluctuations due to weather and conservation) (citing Exhibit 27, Lyons Rebuttal).

[184] Brief of Spire at 62.

[185] Exhibit 123 at 3:5-4:3 (Stahlman Rebuttal); Tr. 470:15-24. The Commission should disregard other arguments in Spire's brief that cite no record evidence from page 62 to 63. For example, ,the statement that "Since Spire's has specific volume requirements within the SGS class, there is no need to have a range" has no record citation for support.

For the reasons stated above, the Commission should adopt Staff's proposed RNA usage blocks, and not Spire's proposed usage blocks.

D. Commission Staff does not oppose the recommended edits to a WNAR tariff proposed by the Office of the Public Counsel, if the Commission were to re-authorize a WNAR tariff in this case.

In the event the Commission re-authorizes a Weather Normalization Adjustment Rider (WNAR), the Office of Public Counsel proposes six modifications.[186] Staff largely does not oppose those changes.[187] For the largest change, switching to a filing once per year instead of twice per year, "Staff agrees that this may make the WNAR simpler to calculate…."[188]

--Curtis Stokes.

CONCLUSION

In conclusion, in consideration of all of the above, Staff recommends that the Commission resolve each contested issue as Staff has recommended. In this way, just and reasonable rates will be set and all relevant factors considered, with due regard to the interests of the various parties and to the public interest.

WHEREFORE, on account of all the foregoing, Staff prays that the Commission will issue its findings of fact and conclusions of law, determining just and reasonable rates and charges for Spire Missouri as recommended by Staff herein; and granting such other and further relief as is just in the circumstances.

[186] Brief of OPC at 214-15.

[187] Tr. 466:24-467:8. Staff is neutral on whether Spire's system could handle billing blocks as the Office of the Public Counsel proposes. *Id.*

[188] Exhibit 123 at 5:5-14 (Stahlman Rebuttal).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **17th day of September, 2021,** to the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Kevin A. Thompson