



The Signatories urge the Commission to adopt this reduction in the context of this rate case for two main reasons. The reduction is known and measurable and secondly, it represents an extraordinary 38% change in Spire's tax rate.

A. These Costs Are Known and Measurable

While the complete totality of the impact of the Tax Act not known; the quantifiable impact of the Tax Act is with respect Spire's annual income tax payments and its accumulated deferred income taxes ("ADIT") are known and measureable. At the February 5 hearing, Staff witness Marc Oligschlaeger testified to Staff's determination that the impact of the Tax Act is known and measurable, and the impacts of the reduction of the corporate income tax rate from 35% to 21% and be "calculated with great accuracy," stating "I am not aware that anyone is disputing Staff's method of calculating that impact."<sup>1</sup> OPC and the Signatories recommend that the Commission address the *known* impacts in this proceeding, and authorize a tracker to account for any potential additional assets or liabilities resulting from the Tax Act.

**i. Annual Income Tax Expense**

Greg Meyer testified in support of the Stipulation, and provided his calculations in Exh. 754, in which he calculated the total Spire effect from tax reform to be \$16.7 million.

Mr. Meyer's calculation is within a tenth of Staff Witness Lisa Ferguson's figure as testified to at the February 5 hearing.<sup>2</sup> Both Mr. Meyer's and Ms. Ferguson's calculations contemplated the prior public deliberations of the Commission at Agenda, and reflect their professional expert opinion as to the known impacts of the Tax Act on income tax expense.<sup>3</sup>

---

<sup>1</sup> Feb 5 Hearing, GR-2017-0215, 5:58:57, <http://psc.mo.gov/VideoDetail.aspx?Id=5980>

<sup>2</sup> In Staff's *Affidavit*, Ms. Ferguson provided an estimate of the Tax Act impact of \$15.1, from the taxable income based upon Staff's true-up position, which contemplated the filed Stipulation and Agreements at that time, but did not include the determination of other issues by the Commission. 7:57:40

<sup>3</sup> Feb 5 Hearing, GR-2017-0215, 7:58:36, <http://psc.mo.gov/VideoDetail.aspx?Id=5980>

**a. Company argues that the Commission ignore the Tax Act**

At the February 5 hearing, Spire argued against Staff's position and the position of the Signatories, asserting that the federal corporate tax rate calculated in rates should remain at 34% due to the change occurred outside of the test year. This argument would have the Commission authorize rates based on a level of anticipated income tax expense it knows to be untrue. Such a rate would neither be just nor reasonable.

**ii. Accumulated Deferred Income Taxes**

In addition to the known impact on Spire's income tax expense, the Signatories recognize that Tax Act also results in Spire's Accumulated Deferred Income Tax ("ADIT") being overstated, and recommend the Commission address such expenses in this proceeding. Deferred income taxes reflect the ratepayer prepayment of income taxes, which the utility will not actually have to pay until sometime in the future. At hearing Public Counsel noted Spire's ability to keep and use the money, which is paid by ratepayers, as an *interest free* loan.

The ADIT was calculated and put into the deferred account based on Spire having a 35% income tax rate. As OPC noted in its Brief in this case, the Commission has described deferred income taxes in an electric rate case:

Deferred income taxes arise from temporary differences between book and tax treatment of an item of income or expense. Under well-established regulatory principles, deferred taxes are treated as a reduction to rate base so ratepayers do not pay a return on funds provided to the company at no cost. In that way, ratepayers are given the benefit of what is, in effect, an interest free loan from the government to the utility. In other words, ***the benefit the company receives from being able to keep money by delaying payment to the government*** is passed along to ratepayers. (Footnotes omitted, emphasis added).<sup>4</sup>

---

<sup>4</sup> *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase Its Annual Revenues for Electric Service*, 18 Mo. P.S.C. 3d 306, 348, Case No. ER-2008-0318, Decided January 27, 2009.

There are two types of ADIT, protected and unprotected. At hearing, Staff described these terms according to the Internal Revenue Service Code.<sup>5</sup> Mr. Oligschlaeger described protected ADIT as a normalization between accelerated depreciation and straight line depreciation calculated in a rate case. Both Spire and Mr. Meyer acknowledge the refund flow-back for the protected assets is 20 years.<sup>6</sup>

In contrast, unprotected ADIT has no such normalization. Mr. Oligschlaeger testified the Commission is free to choose any flow-back period. Accordingly, the Commission could order the unprotected ADIT to be flowed back to customers immediately. But both Staff and the Signatories recommend a 10-year flow back period as reasonable for unprotected assets.

Mr. Meyer's includes his ADIT reduction calculation in Exh. 754. According to information Mr. Meyer received in an email from Spire at 8:27 p.m. on January 30, Spire's ADIT is evenly split between protected and unprotected. At hearing, Mr. Oligschlaeger testified that the estimate provided by Spire is a "reasonable basis for doing this calculation."<sup>7</sup> Using the ADIT balance of \$344 million as of September 30, 2017, Mr. Meyer used a conservative 10 year flow-back period to determine the revenue requirement effect from the Tax Law changes on Spire's revenue requirement. The result is a total deferred tax impact for Spire of \$11.7 million.

Staff filed an initial position in this case, but was able to refine its initial position based on additional data including information from the Company. The Company provided information in the Commission ordered January 30 Technical Conference. Based in part on that data, as well as additional review of the Tax Act, CPA's Mr. Oligschlaeger and Ms. Ferguson

---

<sup>5</sup> Feb 5 Hearing, GR-2017-0215, 7:14:00, <http://psc.mo.gov/VideoDetail.aspx?Id=5980>

<sup>6</sup> Feb 5 Hearing, GR-2017-0215, 7:17:46, <http://psc.mo.gov/VideoDetail.aspx?Id=5980>

<sup>7</sup> Feb 5 Hearing, GR-2017-0215, 7:17:32, <http://psc.mo.gov/VideoDetail.aspx?Id=5980>

were was able to calculate the Tax Law effects with a reasonable degree of certainty. Ms. Ferguson testified that approximately \$11.5 million should flow back to ratepayers. Ms. Ferguson testified to arriving at this figure by taking

“Staff’s position on ADIT which reflects some differences from the company based mainly on regulatory assets and liabilities that have deferred tax impacts. I took that \$338.6 million and back into what the foundational number of that would be. So I took the \$338.6 million and divided that by the effective tax rate that was originally in our case, which was 38.3886%. That is a combination of the 35% federal tax rate and the 6.25% state tax rate. Once I got that number, I multiplied it by the new effective tax rate, which is effectively the 25.4483%. That is a combination of the flat 21% and plus the state 6.25%. Once I have gotten that separate number, I subtracted the two, so I took 338.6 less the 224.5, and I considered that my excess deferred tax. Then I multiplied that by 50%, because we are assuming that 50% is protected and 50% is unprotected. One half, I took and divided over 10 years, considering that unprotected, which was our proposal for amortization. And then I took the other 50% and I divided it by the 20 years, which was what we believe would be the average asset life to return the excess deferred taxes over. Once that was done, each number was factored up for the tax to make sure it was a revenue requirement number. And that in total is \$11.5 million.”<sup>8</sup>

This resulted in a known and measurable tax reduction recommendation remarkably similar to Mr. Meyer’s. Despite using slightly different numbers, Staff’s recommendation for a total reduction in Spire’s revenue requirement in this case is \$28.1 million.

Both Public Counsel and the Staff acknowledge these numbers, while known and measurable, are conservative estimates and thus, recommend along with ordering a reduction in rates, that the Commission order a regulatory asset to track any differences in the estimate and the actual results.

The Signatories acknowledge the \$28 million, while calculated conservatively, is an estimate. Accordingly, in order to record the actual results of the tax reduction Signatories recommend the Commission order Spire to record any differences between “the sum of the

---

<sup>8</sup> Feb 5 Hearing, GR-2017-0215, 7:59:00, <http://psc.mo.gov/VideoDetail.aspx?Id=5980>

actual impacts and the \$28 million estimate in a regulatory account for consideration in Spire's next rate case." Stipulation at para. 3.

Staff's overall result is \$28.1 million, which is remarkably close to the Signatories recommendation.

Furthermore, this recommendation is beneficial to the Company in that it does not seek to return or treatment for the income tax differential for the first quarter of 2018 paid prior to the effective date of the Commission's order.

## **II. Commission has Authority to Address the Tax Act in this Case**

At the February 5 hearing, the Company argued that the Commission lacked any authority to violate the "matching principle".<sup>9</sup> The Western District Court of Appeals disagrees. The express authority is found in a 1992 case, the Western District explained the purpose of a test year.<sup>10</sup>

The accepted way in which to establish future rates is to select a test year upon the basis of which past costs and revenues can be ascertained as a starting point for future projection. A test year is a tool used to find the relationship between investment, revenues, and expenses. Certain adjustments are made to the test year figures; "normalization" adjustments used to eliminate non-recurring items of expenses or revenues and "annualization" adjustments used to reflect the end-of-period level of investment, expenses and revenues. Adjustments are also made for events occurring outside the test year. (internal citations omitted, emphasis supplied.)

The Court acknowledged three criteria that govern the Commission's decision to make an adjustment outside the test year. These criteria are considerations, which are designed to promote setting just and reasonable rates going forward:

The criteria used to determine whether a post-year event should be included in the analysis of the test year is whether the proposed adjustment is (1) "known and

---

<sup>9</sup> The Company had no such concern for its argument in favor of the sanctity of the matching principle in its unabashed attempt to negotiate with the Commission at the February 5 hearing.

<sup>10</sup> *State ex rel. GTE N., Inc. v. Mo. Pub. Serv. Comm'n*, 835 S.W.2d 356 (Mo. Ct. App. 1992).

measurable," (2) promotes the proper relationship of investment, revenues and expenses, and (3) is representative of the conditions anticipated during the time the rates will be in effect.<sup>11</sup>

The facts in this case lead the Commission to answer yes to all three criteria. In accord with Staff testimony and Mr. Meyer's testimony and workpapers, the adjustment is now known and measurable. Including this reduction in revenue requirement in this rate case undeniably promotes the proper relationship of investment, revenues and reduced tax expenses. Finally, the Commission may reasonably anticipate that the tax reduction will remain in effect during the next four years. All of which leads to the inevitable conclusion that the Commission should address the tax reduction in this case. Merely setting a deferral mechanism, as Spire requests is wholly inadequate to allow customers to benefit from the tax reduction.

Notably, in the Stipulation the Signatories agree Spire may keep benefits it receives from the tax reduction between January 1, 2018 and the date the Commission's Order in this case is effective.

#### **A. Prior Commission Decisions on the Matching Principle**

Matching principle is not sacrosanct. Facing a similar situation, the Commission recognized that exceptions to the matching principle were necessary "when such known and measurable increases in expenses occur it is more equitable to allow such an expense to be reflected in the revenue requirement than to disallow it for the sole reason that corresponding revenues may be lacking."<sup>12</sup>

The Commission has included costs which occurred outside the test year in rates in earlier cases. Particularly relevant here, is Case No. ER-2010-0036. In that case, on September

---

<sup>11</sup> *Id.*

<sup>12</sup> *In the Matter of St. Louis County Water Company, St. Louis, Missouri, for Authority to File Tariffs to Increase Water Service Provided to Customers in the Missouri Service Area of the Company*, Report and Order, 29 Mo. P.S.C. (N.S.) 425, 435 (1988).

14, 2009, the Commission established the test year for this case as the 12-month period ending March 31, 2009, trued-up as of January 31, 2010. The parties disagreed about application of the January 31, 2010 true-up cutoff date to Ameren’s fuel assemblies. The Commission noted it: “examined the company’s income and expenses to determine the amount of revenue the company should be allowed to generate through the rates to be established as a result of this case. The goal is to match income and expenses over the same period so that a true level of required revenue can be determined.”<sup>13</sup>

Callaway refueling was scheduled to start in April 2010 and would not be completed until early June 2010. The costs associated with AmerenUE’s fuel rod assemblies would not be included in the test year absent a Commission decision to allow an out-of-period adjustment. The Commission sided with the Company over customers’ objections and reached “outside the test year to pull in an expense. . . .”<sup>14</sup> of \$11 million. The Commission concluded the matching principle was not inviolable: “the matching principle is not an absolute bar to an appropriate out-of-period adjustment. When faced with this question in the past, the Commission has said ‘when such known and measurable increases in expenses occur it is more equitable to allow such an expense to be reflected in the revenue requirement than to disallow it for the sole reason that corresponding revenues may be lacking.’” In its defense, the Commission cited two other cases in which it allowed ‘a company to recover for a known postage rate increase that would occur

---

<sup>13</sup> *Id.* p. 56.

<sup>14</sup> *Id.*

outside the test year,<sup>15</sup> and a known wage increase and FICA withholding tax increase,<sup>16</sup> again outside the test year.

The Commission has included out-of-period expenses in rates to the benefit of utilities in the past; and it should not hesitate to afford the same treatment to ratepayers and reduce Spire's revenue requirement by the amount of savings from the Tax Act.

### **III Failure to Address the Issue in This Proceeding May Preclude Ratepayer Recovery**

Should the Commission fail to recognize any revenue requirement offset, and instead defer any treatment to a future case, OPC believes there to be a real possibility that ratepayers will not realize any savings. Ordering Spire to record savings in a deferral account will delay any recovery by at least four years. Spire filed this rate admittedly at the very last moment allowed by the Infrastructure System Replacement Surcharge ("ISRS"). Sections 393.1009-393.1015 RSMo. At the Legislature, Spire has advocated for a change to the statute that would allow even more time between required rate case filings. This further extends the time the deferral could be in place, which would mean Missouri customers might not see any benefits for more than five years. The Commission should not order deferral of these benefits to customers, especially in light of the fact Alabama customers started receiving benefits on February 1.<sup>17</sup>

---

<sup>15</sup> *In the Matter of St. Louis County Water Company, St. Louis, Missouri, for Authority to File Tariffs to Increase Water Service Provided to Customers in the Missouri Service Area of the Company*, Report and Order, 29 Mo. P.S.C. (N.S.) 425, 435 (1988).

<sup>16</sup> *In the Matter of Citizens Electric Corporation of Ste. Genevieve, Missouri, for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Missouri Service Area of the Company*, Report and Order, 24 Mo. P.S.C. (N.S.) 450, 457 (1981).

<sup>17</sup> Exh. 439, "Spire to slash rates in response to Trump tax cuts" AL.com.

In Alabama, Exh. 439, Spire spokeswoman Jenny Gobble who reports that residential customers in Mobile can expect a 4 percent rate decrease, while other Alabama customers can expect a 3 percent decrease. In reference to the Alabama tax reductions, on February 1, the St. Louis Post dispatch noted that as of February 1, Spire customers in the Mobile area, will benefit from tax quoted Ms. Gobble: “We are pleased to share these savings with customers as a result of the historic tax law changes. It is the right thing to do to keep bills low for customers . . . .”

In contrast, in this Missouri rate case, Spire wants to retain all the benefits of the reduction and argues its tax rate should remain at 34%. Spire’s approach would mean its Missouri customers would see no benefit from the 38% reduction in its federal income tax obligation. Missouri customers, however, are aware the tax reduction has an effect on utility rates and have high expectations for a rate reduction.

**Wherefore**, for the aforementioned reasons, the Commission should find that this rate case proceeding is the appropriate venue to determine these costs, and include a reduction in revenue of \$28 million, in accordance with the recommendations filed by the Signatories to the Stipulation and Agreement filed February 5.

Respectfully submitted,

/s/ Hampton Williams

Hampton Williams  
Public Counsel  
Missouri Bar. No. 65633

/s/ Lera L. Shemwell

Lera Shemwell (#43792)  
Senior Counsel  
(573) 751-4857

Office of Public Counsel  
PO Box 2230  
Jefferson City, MO 65102  
[Hampton.Williams@ded.mo.gov](mailto:Hampton.Williams@ded.mo.gov)  
[Lera.Shemwell@ded.mo.gov](mailto:Lera.Shemwell@ded.mo.gov)

CONSUMERS COUNCIL OF MISSOURI

/s/ John Coffman

John B. Coffman MBE #36591

John B. Coffman, LLC

871 Tuxedo Blvd.

St. Louis, MO 63119-2044

(573) 424-6779

[john@johncoffman.net](mailto:john@johncoffman.net)

**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 6<sup>th</sup> day of February 2018.

/s/ Hampton Williams