

Exhibit No: _____
Issue: **Cash Working
Capital**
Witness: **Charles J. Kuper**
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Sponsoring Party: **Spire Missouri Inc.**
Case No.: **GR-2022-0179**
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SPIRE MISSOURI INC.

CASE NO. GR-2022-0179

DIRECT TESTIMONY

OF

CHARLES J. KUPER

TABLE OF CONTENTS

DIRECT TESTIMONY OF CHARLES J. KUPER..... 1

I. INTRODUCTION..... 1

II. CASH WORKING CAPITAL..... 2

III. IMPACT OF A NORMALIZATION VIOLATION 5

IV. CONCLUSION 8

DIRECT TESTIMONY OF CHARLES J. KUPER

I. INTRODUCTION

1
2
3
4
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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Charles J. Kuper. My business address is 700 Market Street, St. Louis, MO 63101.

Q. WHAT IS YOUR PRESENT POSITION?

A. I am presently employed as Director, Tax for Spire Missouri Inc. (“Spire Missouri” or “Company.”)

Q. PLEASE STATE HOW LONG YOU HAVE HELD YOUR POSITION AND BRIEFLY DESCRIBE YOUR RESPONSIBILITIES.

A. I have been employed in my current position since I joined Spire Missouri in August 2015. For the period from January 2017 until July 2018 I also oversaw the External Financial Reporting function. My responsibilities include tax accounting, tax compliance, tax audits and tax planning, as well as external financial reporting activities with the Securities and Exchange Commission, the Missouri Public Service Commission (the “Commission”), the Federal Energy Regulatory Commission and other governmental agencies.

Q. PLEASE BRIEFLY DESCRIBE YOUR PROFESSIONAL EXPERIENCE PRIOR TO JOINING SPIRE MISSOURI.

A. Prior to joining Spire Missouri, I was employed with Lumara Health, Inc. as its Senior Director, Reporting & Tax. I worked for Lumara Health from 2000 to 2015. I joined Lumara Health in 2000 as Director, Tax and was promoted to Senior Director, Tax in 2007. I then added the Reporting function in 2013. I worked for Hussmann Corporation as its International Tax Manager from 1998 – 2000. I spent approximately 11 years working with two national public accounting firms (Arthur Andersen & KPMG) prior to these roles.

1 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

2 A. I hold a Master of Accountancy with a Tax emphasis from Southern Illinois University at
3 Carbondale, Illinois (1987), and a Bachelor of Science in Accounting from Southern
4 Illinois University at Carbondale, Illinois (1986).

5 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY BEFORE THIS COMMISSION?**

6 A. Yes, I testified in Spire Missouri's most recent rate case, Case No. GR-2021-0108. I also
7 filed testimony in Case Numbers GR-2017-0215, GR-2017-0216, GO-2019-0115, GO-
8 2019-0116, GO-2019-0356, and GO-2019-0357.

9 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

10 A. The purpose of my direct testimony is to support the Company's adjustment to a zero-day
11 lag for income tax expense in the Company's cash working capital ("CWC") computation.
12 I will explain the tax implications associated with maintaining a 365-day lag, specifically
13 the risk for a normalization violation, and recommend the Commission either allow the
14 Company to use a zero-day lag or support Spire Missouri in seeking a private letter ruling
15 ("PLR") from the IRS for further guidance on this issue. This will best ensure the
16 Company's compliance with the IRS guidelines and likely eliminate the risk of being
17 subject to significant financial consequences associated with a normalization violation.

18 **II. CASH WORKING CAPITAL**

19 **Q. WHAT DID THE COMMISSION DETERMINE WITH RESPECT TO CASH**
20 **WORKING CAPITAL IN THE COMPANY'S PRIOR RATE CASE?**

21 A. The Commission found that Spire Missouri had significantly reduced its current federal
22 and state income tax obligations, generating large annual taxable losses. The Commission
23 further found that the Company planned to utilize the net operating losses to reduce future

1 income tax obligations, making it highly unlikely that Spire would pay income taxes over
2 the next three years. As a result, the Commission concluded that the Company was not
3 remitting quarterly taxes, and therefore a 38-day income tax expense lag in the cash
4 working capital calculation was inappropriate. Rather, the Commission determined that
5 the appropriate expense lag days for income taxes within the cash working capital
6 calculation was 365 days.

7 **Q. WHY IS SPIRE MISSOURI ADJUSTING CWC IN THIS CASE?**

8 A. Two reasons: (1) implementing the Commission's 2021 decision with respect to lag time
9 is essentially a duplicate adjustment; and (2) this duplication may be considered a
10 normalization violation by the IRS. The recorded amount of accumulated deferred income
11 taxes (ADIT), deducted from rate base as an assumed source of capital, already adjusts the
12 revenue requirement for income taxes collected in rates that are not currently paid to the
13 IRS. Setting the lag to 365 days is duplicative to the ADIT rate base adjustment and may
14 be considered by the IRS as a normalization violation if it is determined to circumvent
15 those rules.

16 **Q. HAS SPIRE MISSOURI MADE ANY ADJUSTMENTS TO CWC FOR INCOME
17 TAXES IN THIS CASE?**

18 A. Yes. Spire Missouri's proposed revenue requirement in this proceeding includes the
19 Company's proposed adjustment to a zero-day lag for income tax expense in the
20 Company's CWC computation.

21 **Q. IS A ZERO-DAY LAG THE SAME PROPOSAL THE COMPANY MADE IN THE
22 LAST RATE CASE?**

1 A. No. The Company proposed a 38-day lag in the last rate case. Understanding the
2 Commission's reservations regarding the 38-day lag, the Company believes a zero-day lag
3 is appropriate and in the best interest of both the Company and its customers.

4 **Q. IN YOUR OPINION, IS THE METHODOLOGY SPIRE MISSOURI IS**
5 **PROPOSING IN THIS PROCEEDING APPROPRIATE?**

6 A. Yes. Income tax expense is a required component of cost of service. In determining the
7 revenue requirement and the allowed rate of return, income tax expense is factored into
8 these amounts. This amount of income tax expense will be paid to the tax authorities at
9 some point. Because the Company has utilized accelerated depreciation, it has reduced its
10 current tax expense. This tax expense has been shifted to a deferred tax expense. As such,
11 the Company will not pay current income taxes but will indeed have to pay these taxes in
12 the future. Using a zero-day lag appropriately adjusts the CWC calculation to reflect all
13 income taxes as deferred and not currently paid. A 365-day lag is inappropriate because
14 the revenue requirement is already reduced by the ADIT offset.

15 **Q. PLEASE EXPLAIN FURTHER WHY USING A 365-DAY LAG PERIOD IS**
16 **DUPLICATIVE.**

17 A. By using a 365-day lag for income tax expense in the CWC calculation, the ratepayers are
18 essentially receiving an additional benefit for income taxes prior to the time the Company
19 will realize the income tax benefit. This creates the concern for the potential normalization
20 violation. ADIT is not directly included in the CWC calculation, but it is indirectly
21 included based on the Commission's position from the last rate case, and may be seen by
22 the IRS as a way to circumvent the normalization rules. The use of the 365-day lag has
23 resulted in a reduction of the revenue requirement solely based on the inclusion of an

1 adjustment for income tax expense that has already been reflected in rate base as an ADIT
2 offset.

3 **III. IMPACT OF A NORMALIZATION VIOLATION**

4 **Q. HOW DOES THE IRS TREAT NORMALIZATION ISSUES?**

5 A. The IRS does not take normalization violations lightly, and how the IRS responds often
6 depends on whether the normalization violation is considered inadvertent or intentional.
7 In prior instances of regulatory orders resulting in normalization issues that were
8 considered inadvertent, the IRS has allowed the issue to be corrected at the next earliest
9 opportunity which usually would be the next rate proceeding. If the normalization
10 violation is not considered inadvertent but considered intentional, there most likely is not
11 an opportunity to fix it and the Company and customers must deal with the disastrous
12 consequences of such a violation.

13 **Q. DO YOU BELIEVE THE IRS MAY VIEW UTILIZATION OF A 365-DAY LAG**
14 **FOR INCOME TAX EXPENSE AS AN INTENTIONAL VIOLATION OF THE**
15 **NORMALIZATION RULES?**

16 A. It is certainly a possibility, as the Commission has ordered the Company to use a 365-day
17 lag despite being notified of this potential violation from both the Company and from Staff.
18 If the Commission does not agree that a zero-day lag is appropriate, and is not persuaded
19 by this testimony and the risk associated with their decision, an IRS Private Letter Ruling
20 should be requested to either eliminate the risk or definitively conclude there is a violation.

21 **Q. WHAT NOTICE DID STAFF AND THE COMPANY GIVE THE COMMISSION**
22 **REGARDING THE POTENTIAL VIOLATION OF THE NORMALIZATION**
23 **RULES?**

1 A. During the post-hearing briefing process in Spire’s last rate case, both the Company and
2 Staff asserted that a violation of the IRS normalization rules may occur by calculating
3 income tax expense using a 365-day lag. Staff noted for the Commission in its Post-
4 Hearing Brief that “[t]he OPC’s adjustment to CWC is an obvious attempt to offset income
5 tax expense in the Company’s revenue requirement. Calculating the income tax expense
6 effect on CWC the way OPC intends to calculate it is incorrect. Additionally, OPC’s
7 method would violate the IRS’ normalization rules.” This advance notice of the potential
8 normalization violation makes it more crucial that this issue be resolved in the manner I
9 am suggesting here.

10 **Q. WHAT ARE THE POTENTIAL DISASTROUS RESULTS OF A**
11 **NORMALIZATION VIOLATION TO THE COMPANY?**

12 A. The primary result of a normalization violation is the prohibition of using accelerated
13 depreciation **forever**. This would reduce and eliminate the ADIT offset currently being
14 used to fund the Company’s capital projects. Having additional cash in the form of the
15 ADIT offset ultimately reduces customer rates as the ADIT offset serves as an interest free
16 loan to the Company. This is a significant financial benefit to customers. It would also
17 cause Spire Missouri to become a cash taxpayer much earlier than currently expected.

18 **Q. APPROXIMATELY HOW MUCH ACCELERATED DEPRECIATION IS AT**
19 **RISK IF A NORMALIZATION VIOLATION IS DETERMINED TO HAVE**
20 **OCCURRED?**

21 A. As of December 31, 2021, the amount of ADIT offset related to accelerated depreciation
22 is estimated at \$207 million, a direct benefit to the customer.

1 **Q. WHAT IS REQUIRED TO OBTAIN A PRIVATE LETTER RULING (“PLR”)**
2 **FROM THE IRS?**

3 A. There is a lot of data that will need to be assembled to prepare a request for a PLR. Once
4 the data is collected, the initial step would be to request a pre-submission conference with
5 the IRS to determine if they would rule on the issues being presented. If they will rule on
6 the issues, then a full PLR submission would need to be prepared. Both the pre-submission
7 conference and the PLR submission require support from the Commission. All parties,
8 including the Commission, Staff, and potential intervenors will have the opportunity to
9 participate in the PLR process.

10 **Q. IS THERE AN ESTIMATE OF THE LENGTH OF TIME INVOLVED IN**
11 **OBTAINING A PLR?**

12 A. In speaking to consultants familiar with the process, it would take approximately 30 days
13 for a pre-submission conference with the IRS and approximately six (6) months to
14 complete the PLR submission.

15 **Q. WHY IS SPIRE MISSOURI RAISING THE POSSIBILITY OF A PLR AT THIS**
16 **TIME?**

17 A. Spire Missouri believes there is a risk that the IRS could view the prior decision of a 365-
18 day lag as a normalization violation. If this risk is realized, then the result damages both
19 Spire Missouri and its customers. Since Spire Missouri is filing this rate case so closely to
20 the last rate case it seems like the appropriate time to present options to the Commission
21 and the parties involved in this case that will address the potential normalization violation
22 issues in a manner that reduces risk to the Company and customers. Spire Missouri views
23 those options as either making the adjustment included in its direct filing (zero-day lag) or

1 seeking a PLR to verify whether there is a normalization violation directly resulting from
2 the CWC adjustment decided in the last case assuming that decision stands in this case.
3 Spire Missouri believes this approach will best ensure that customers continue to receive
4 the financial benefit of accelerated depreciation.

5 **IV. CONCLUSION**

6 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

7 A. Yes, it does.

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

In the Matter of Spire Missouri Inc.'s)
Request for Authority to Implement a)
General Rate Increase for Natural Gas)
Service Provided in the Company's)
Missouri Service Areas.)

Case No. GR-2022-0179

AFFIDAVIT

STATE OF MISSOURI)

CITY OF ST. LOUIS)

SS.

I, Charles J. Kuper, of lawful age, being first duly sworn, deposes and states:

1. My name is Charles J. Kuper. I am the Director, Tax for Spire Missouri Inc. My business address is 700 Market St., St Louis, Missouri, 63101.

2. Attached hereto and made a part hereof for all purposes is my direct testimony on behalf of Spire Missouri Inc. for the above referenced case.

3. Under penalty of perjury, I hereby declare that the foregoing is true and correct to the best of my knowledge and belief.



Charles J. Kuper

4/1/2022

Date