

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

In the Matter of the Application of Spire Missouri)
Inc. to Change its Infrastructure System) **File No. GO-2019-0115**
Replacement Surcharge in its Spire Missouri)
East Service Territory)

In the Matter of the Application of Spire Missouri)
Inc. to Change its Infrastructure System) **File No. GO-2019-0116**
Replacement Surcharge in its Spire Missouri)
West Service Territory)

**AMICUS CURIAE BRIEF OF THE
MISSOURI ENERGY DEVELOPMENT ASSOCIATION**

COMES NOW the Missouri Energy Development Association (“MEDA”) and submits its *Amicus Curiae* Brief in the above captioned proceedings pursuant to 4 CSR 240-2.075 (11) of the Missouri Public Service Commission’s (“Commission”) Rules of Practice and Procedure. In support thereof, MEDA states as follows:

1. Organized in 2003, MEDA is the association of Missouri’s investor-owned utilities and their strategic partners. Its members serve nearly 3.3 million customers in nearly every county of the State, invest over \$1 billion in-state annually, and employ over 10,500 Missourians while providing the electric and natural gas services integral to the safety and prosperity of all Missourians.

2. MEDA has recently become aware of an issue that has been raised in the above captioned proceedings regarding the Commission’s jurisdiction to consider costs that were not fully recovered in two prior Infrastructure System Replacement Surcharge (“ISRS”) cases filed by Spire Missouri Inc. MEDA believes that the Commission has the jurisdiction to consider such costs in these new ISRS proceedings.

3. MEDA concurs generally in the legal analysis provided by Spire Missouri Inc. in its Response in Opposition to Staff's Motion to Dismiss Portion of ISRS Application which was filed in the above captioned cases on March 22, 2019. While a judicial review proceeding may preclude the Commission or parties to a case from settling an issue that has been properly appealed, it does not impede the Commission's exercise of its statutory ratemaking power to routinely consider and decide in *new* cases whether and to what extent costs or revenues should be reflected in rates. As Spire points out in its March 22, 2019 pleading, this proposition is demonstrated, in part, by the long line of cases applying the mootness doctrine in other appeals involving Commission decisions. See e.g. *State ex rel. Missouri Public Service Co. v. Fraas*, 627 S.W.2d 882 (Mo. App. W.D. 1981); *State ex rel. Monsanto Co. v. Pub. Serv. Comm'n*, 716 S.W.2d 791, 793 (Mo. banc 1986); *In re Sw. Bell Tel. Co.'s Proposed Revision to Gen. Exch. Tariff*, P.S.C. MO–No. 35, 18 S.W.3d 575, 577 (Mo.App.2000) (*quoting State ex rel. County of Jackson v. Pub. Serv. Comm'n*, 985 S.W.2d 400, 403 (Mo. App. 1999)). These cases make clear that the Commission controls the process for considering and adjudicating new cases pursuant to its statutory authority, regardless of whether some element of that new case may involve certain costs, revenues or expenses that are under review in an appellate case. They also stand for the proposition that it is the appellate courts that will defer to the Commission once it exercises its ratemaking powers by determining whether and to what extent the court may provide relief given that the rates and charges under review have been superseded by new rates and charges.

4. In addition to the legal analysis provided by Spire Missouri, MEDA directs the Commission's attention to the 2013 Western District Court of Appeal decision in *In the Matter of the Determination of Carrying Costs for the Phase-In Tariffs of KCP&L Greater Missouri Operations Company, AG Processing Inc. v. Missouri Public Service Commission*, 408 S.W.3d

175 (Mo. App. W.D. 2013). In its Opinion, the Court determined that the Commission did have the jurisdiction and authority to consider in a new case what carrying costs should be applied during a phase-in period, even though the its order in the prior case establishing the phase-in was under judicial review. In so holding, the Court distinguished the Commission’s action from prior cases, such as *State ex rel. Mo. Cable Telecomms. Ass'n v. Mo. Pub. Serv. Comm'n*, 929 S.W.2d 768, 772 (Mo. App. W.D.1996), where the Commission had attempted to approve a settlement of a matter that was currently before an appellate court. As the Court stated:

These cases stand for the proposition that, once a writ of review is filed from an order of the PSC, “exclusive jurisdiction vest[s] in the circuit court where the appeal [is] filed; leaving the PSC without jurisdiction to *alter or modify its order.*” *Mo. Cable Telecomms. Ass'n*, 929 S.W.2d at 772 (emphasis in original). The orders entered by the PSC in the Carrying Costs Case do not alter or modify the orders under review in the Rate Change Case; rather, they merely implement the orders in the Rate Change Case that approved a phase-in of \$7 million of the approved increase and authorized carrying costs. Further, the cases above are distinguishable because, unlike the present case, each dealt with a subsequent order entered by the PSC in the same administrative case that was, or was alleged to be, under review. See, e.g., *Mo. Cable Telecomms. Ass'n*, 929 S.W.2d at 771 (the parties attempted to enter into a settlement agreement in the underlying administrative action while it was under review by the circuit court); *Campbell Iron Co.*, 296 S.W. at 999–1000 (the PSC issued an order extending the length of the rate increase while the order granting the increase was under review); *State ex rel. Kansas City v. Pub. Serv. Comm'n*, 360 Mo. 339, 228 S.W.2d 738, 742 (1950). *Id* at 185.

5. It is MEDA’s understanding that no party to these current ISRS cases is attempting to alter or modify the Commission’s order in the prior ISRS cases or to settle that matter outside of the appellate court’s supervision. It is also MEDA’s understanding, that these current ISRS cases are new and different from the prior ISRS cases under review, that the new cases involve different evidence than the old cases and that the charges established in the new ISRS cases would go into effect prospectively, and for a different amount than the charges denied in the old ISRS cases. Given these considerations, MEDA contends that the Commission has jurisdiction to consider such costs in these proceedings.

6. MEDA also has a general concern about the potential inadvertent regulatory disruptions that would occur in the event the Commission were to rule in this case that it does not have jurisdiction. Such a finding could lead to other instances where the Commission would be asked to exclude, or to set aside and not consider, a portion of a case filing because some operational, cost, revenue or expense item is being considered in a judicial review proceeding relating to a prior case. This could unnecessarily complicate cases and delay resolution either by virtue of practical circumstance or as part of trial strategy. This problem can be avoided simply by following the guidance in the *KCP&L GMO* case that the Commission has full authority to exercise its ratemaking powers in new cases without regard to whether a certain cost, revenue or expense item is being considered in a judicial review proceeding.

Respectfully submitted,

/s/Paul Boudreau

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on the 15th_day of April, 2019, to the following:

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