

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

In the Matter of Laclede Gas Company’s                    )  
Request to Increase Its Revenue for Gas Service        )        **File No. GR-2017-0215**

In the Matter of Laclede Gas Company d/b/a            )  
Missouri Gas Energy’s Request to Increase Its        )  
Revenues for Gas Service                                    )        **File No. GR-2017-0216**

**PUBLIC COUNSEL’S RESPONSE TO THE  
JOINT REQUEST FOR CLARIFICATION OR MODIFICATION**

COMES NOW, the Office of the Public Counsel, (“OPC” or “Public Counsel”) and in Response to the February 27, 2018, and in opposition to the *Joint Request for Clarification or Modification* filed by Spire Missouri (the “Company”) and the Staff of the Commission (“Staff”) (jointly “Signatories”) states as follows:

1. On February 21, 2018, the Commission issued its Report and Order (“Order”) in the above-captioned dockets.

2. On February 27 the Signatories filed suggestions the Commission adopt alterations to its Report and Order. Public Counsel these requests based on the lack of explanation and more importantly any citations to the record evidence to support Commission adoption of these suggestions.

3. In terms of the effect of the Tax Cuts and Jobs Act (“TCJA”), in its order the Commission correctly ordered that all effects of the TCJA be captured in a tracker. Specifically, “that a tracker be established to account for any other effects . . . of the TCJA not captured by the current reduction in income tax expense for possible inclusion in rates at Spire Missouri’s next rate case.” Report and Order at 159.

4. If all effects of the TCJA are not tracked it will be impossible for the Commission to consider all relevant factors it has deferred to the next rate case. The Commission should deny Staff's and Spire's request to change its order that any impacts on computation of utility income tax expense beyond the change in corporate tax rates that are not captured by its Report and Order. *Id.*

5. In terms of the effect of the Tax Cuts and Jobs Act ("TCJA") request, the phrase "as part of its calculation Staff applied a 50/50 split between the "protected" and unprotected ADIT" is not a directive to the Company. It is a fact fully supported by the record evidence. Tr. p. 2993-2996, and Ex. 754, Spire Tax Reform Quantification.

6. Next Public Counsel asks what "normalization violation" is of concern to Staff and Spire? Nowhere in the Joint Request does Staff or Spire identify any normalization violation that would "impair the Company's ability to take accelerated tax depreciation in the future." Moreover, there is certainly nothing in the record to support the jointly recommended change to the Commission's Report and Order regarding any normalization violation. Joint Request at 3.

7. To review what might be meant by a "normalization violation," public counsel turned to Federal rule, 18 CFR 35.24, which addresses normalization of deferred taxes and approved ratemaking methods. Section 3 of the rule shown below requires the public utility to apply a FERC approved ratemaking method specifically applicable to the public utility. But if FERC has not approved such a ratemaking method specifically applicable to the public utility, the public utility must use some ratemaking methodology, which will later be subject to a case-by-case determination.

8. (c) *Special rules.*

9. (1) This paragraph applies:

(i) If the public utility has not provided deferred taxes in the same amount that would have accrued had tax normalization been applied for the tax effects of

timing difference transactions originating at any time prior to the test period; or

(ii) If, as a result of changes in tax rates, the accumulated provision for deferred taxes becomes deficient in or in excess of amounts necessary to meet future tax liabilities as determined by application of the current tax rate to all timing difference transactions originating in the test period and prior to the test period.

(2) The public utility must compute the income tax component in its cost of service by making provision for any excess or deficiency in deferred taxes described in subparagraphs (1)(i) or (1)(ii) of this paragraph.

(3) The public utility must apply a Commission-approved [FERC-approved] ratemaking method made specifically applicable to the public utility for determining the cost of service provision described in subparagraph (2) of this paragraph. If no [FERC]-approved ratemaking method has been made specifically applicable to the public utility, then the public utility must use some ratemaking method for making such provision, and the appropriateness of this method will be subject to case-by-case determination.

10. Spire has not asserted that FERC has made any ratemaking method determination that would be binding on it.

11. In the absence of a FERC approved method, the public utility must use some ratemaking method, but the rule does not require any specific methodology.

12. This review leaves Public Counsel questioning the basis for Commission to change its order to state that the: “protected component [of ADIT] . . . is required to be based on either the average rate assumption method (ARAM) or the alternative Reverse South Georgia method in accordance with the normalization requirements of the TCJA.” Public Counsel has done a thorough but not entirely exhaustive search of the record and is unable to find any reference to either the ARAM or the Reverse South Georgia method. The Commission has no basis for making the substitution requested by the Staff and Spire.

13. Adoption of the second request, to include “Attachment A to the order is unlawful. This Attachment was included in a past Stipulation and Agreement, in an earlier case. The Signatories, late in this process, after the record has been closed and briefs filed, submit language from prior stipulations for inclusion as an addition to the Order. For three reasons it is improper

for the Commission to include this attachment in its Order. Staff or the Company could have proposed inclusion of this language in a Partial Stipulation. This would have afforded other parties the ability to negotiate or object to inclusion of the language. Stipulations are necessarily the result of extensive negotiations and there is no reason to believe proposed Attachment A is any different. The Commission cannot assume other parties would have agreed with this document. Since this document is not part of the record for his case, the Commission has no evidentiary basis for attaching this document to its Order.

14. In terms of Staff's and Spire's request the Commission change its Order because these two parties "agree" to an exact amount of property tax. The amount of \$1,724,786 is not in the record before the Commission, and the only value available to the Commission as the basis for "known and measurable property taxes" is the approximately \$1.4 million in the record, which the Commission cited in its Order.

15. Public Counsel will address the incentive compensation issue in its response to Spire's Request for Clarification.

WHEREFORE Public Counsel requests the Commission refrain from changing its decision unless the clarification is fully supported in the record and refrain from issuing any clarification or modification where the record does not support any change.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

On this 5<sup>th</sup> day of March, 2018, I hereby certify that a true and correct copy of the foregoing motion was submitted to all relevant parties by depositing this motion into the Commission's Electronic Filing Information System ("EFIS").

/s/ Lera L. Shemwell