

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

In the Matter of the Application of Spire Missouri)
Inc. to Establish an Infrastructure System) **File No. GO-2018-0309**
Replacement Surcharge in its Spire Missouri)
East Service Territory)

In the Matter of the Application of Spire Missouri)
Inc. to Establish an Infrastructure System) **File No. GO-2018-0310**
Replacement Surcharge in its Spire Missouri)
West Service Territory)

MOTION FOR RECONSIDERATION

COMES NOW Spire Missouri Inc. (f/k/a Laclede Gas Company, and referred to herein as “Spire Missouri” or “Company”), on behalf of itself and its two operating units, Spire Missouri East (“Spire East”) and Spire Missouri West (“Spire West,” f/k/a Missouri Gas Energy), and submits this Motion for Reconsideration of the Commission’s September 28, 2018 Order Granting Expedited Treatment and Approving Tariff Filings in Compliance with Commission Order (the “Order”). In support thereof, the Company states as follows:

1. On September 21, 2018, Spire Missouri Inc. filed tariff sheets in compliance with the Commission’s *Report and Order* issued on September 20, 2018 for its Spire Missouri East and Spire Missouri West service territories. The tariff sheets had an effective date of October 21, 2018. On that same date, however, the Company filed a *Motion for Expedited and Approval of Compliance Tariffs on Less than 30 Days’ Notice*, in which it requested, consistent with prior Commission practice, that the Commission approve the compliance tariffs no later than October 5, which is the statutory deadline for the Commission to process an ISRS case. The Company subsequently filed a substitute tariff sheet for Tariff Tracking No. YG-2019-0048 on September 24, 2018.

2. On September 27, 2018, the Commission’s Staff filed a recommendation that the

Commission approve the compliance tariffs and grant the motion for expedited treatment. No other party filed a response or objected to approving the tariff sheets or granting the motion.

3. In its Order, the Commission approved the Company's Motion for Expedited Treatment but concluded that it could not approve the compliance tariffs to be effective any sooner than October 8, 2018. In support of that determination, the Order cites *State ex rel. Office of the Public Counsel v. Public Service Commission*, 409 S.W.3d 522, 529 (Mo. App. 2013) and *In Matter of Kansas City Power & Light Co.'s Request for Auth. to Implement a Gen. Rate Increase for Elec. Serv. v. Missouri Pub. Serv. Comm'n*, 509 S.W.3d 757, 786 (Mo. App. 2016).

4. The Company respectfully submits that the ISRS Statute requires that new or changed ISRS rates must go into effect by October 5, 2018, and that there are no legal or other barriers to this requirement. Accordingly, the Company respectfully requests that the Commission reconsider its Order and permit the tariffs to become effective on that date. The Company believes there are a number of reasons that support this result.

5. First, the notion that an Order approving compliance tariffs must have a ten-day effective date represents a significant departure from how the Commission has treated this identical issue in prior ISRS cases. For example, in *Re: Laclede Gas Company*, Case No. GO-2016-0196, the Commission issued an Order Approving Compliance Tariffs on May 27, 2016 with an effective date of May 31, 2016. In adopting this shortened effective date, the Commission noted the same circumstances that are present here, stating as follows:

The Commission issued an order setting a May 26 deadline for the filing of objections to Laclede's request for a May 31 effective date. No objections were received. The Commission finds Laclede's tariff sheet complies with the Commission's May 19 Report and Order and will approve it. Since May 31 coincides with the deadline for an effective date for a Commission order on Laclede's application, no parties objected to the request for expedited treatment or presented evidence of harm due to an earlier effective date, the Commission finds

good cause exists to allow Laclede's compliance tariff to go into effect in less than thirty days. (pp. 1-2, footnote omitted).

The Commission reached a similar conclusion, for similar reasons, in issuing compliance orders with less than a 10-day effective date in other ISRS cases, including Case Nos. GO-2016-0196, GO-2016-0332; and GO-2016-0333.

6. Second, such a result is mandated by a reasonable interpretation of Section 393.1015.1 (3) which provides that the “. . . commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become *effective* not later than one hundred twenty days after the petition is filed.” (emphasis added) The 120-day period mandated by the statute expires on October 5, 2018, and the Company does not believe that that this deadline can or should be circumvented by recognizing an artificial distinction between when the Commission's order is made effective and when the tariffs submitted in compliance with that order becomes effective. To permit the ministerial compliance tariffs to be severed from the substantive order undermines the import of the order, and renders the 120-day mandate meaningless. Once the order is effective, the compliance tariff could be delayed 30 days or even 60 days, at the Commission's discretion. This is not what the legislature intended when it prescribed a 120-day process as part of the incentive to expedite mandated safety work.

7. Third, the Western District Court's opinion in *Re: Kansas City Power & Light Co. v. Missouri Pub. Serv. Comm'n*, 509 S.W.3d 757, 786 (W. D. Mo. 2016) does not require a 10-day effective period for compliance tariff orders. In effect, the Court considered that the rate case was the contested case wherein rates and charges were established, and the right to apply for rehearing of the report and order in the rate case was determinative for purposes of Section 386.520 RSMo. The Court determined that proceedings to review compliance tariffs were not contested cases and therefore the procedural rights and protections relating to such orders are less than those

applicable to an underlying rate case order. In other words, appellants appeal rights are covered by the substantive report and order, relegating the compliance tariff process to a ministerial exercise.

8. The present cases are not even complex rate cases, but simpler, more focused ISRS cases. The **KCPL** decision dictates that, absent extraordinary circumstances, the parties must have at least 10 days to apply for rehearing of the report and order in the ISRS cases. The September 20 Report and Order in these ISRS cases had an 11-day effective period, and both the Company and Public Counsel have in fact filed applications for rehearing prior to the October 1 effective date of the Report and Order.

9. Like the **KCPL** decision involving rate case compliance tariffs, the ISRS compliance tariffs in these cases are not being submitted in a contested case and are not subject to the same rehearing and appeal process as the substantive cases underlying the tariffs. As a result, there is no requirement to afford a 10 day effective period to the compliance tariff order, since the order does nothing substantive but simply approves a motion for expedited treatment and compliance tariffs that no party has opposed. Further, a 10-day effective period for the compliance tariff order is affirmatively inappropriate, because such period results in a violation of the 120-day effective date in the ISRS statute.

10. Fourth, the basic import of *State ex rel. Office of the Public Counsel v. Public Service Commission*, 409 S.W.3d 522, 529 (Mo. App. 2013), that, absent extraordinary circumstances, parties should be given at least 10 days to challenge a Commission Report and Order or tariffs filed in compliance therewith has been fully satisfied in these cases. The Commission's Report and Order was issued on September 20, 2018 and the parties will have been given at least 10 days to file their applications for rehearing by the October 1, 2018 effective date

of the Commission's Order. Similarly, the Company's compliance tariffs were filed on September 21, 2018, with a substitute tariff filed on September 24, 2018. As a result, the parties will have also received at least 10 days to challenge those compliance tariffs as well if they are allowed to become effective by the ISRS-mandated date of October 5, 2018.

11. Finally, in *State ex rel. Office of the Public Counsel v. Public Service Commission, supra, at 524*, at least one party opposed the Motion for Expedited Treatment in that case which would have given the parties just two days to file an application for rehearing. Parties have been given significantly more time in this case to file an application for rehearing and, most importantly, either expressed support or did not oppose the Company's Motion for Expedited Treatment or its compliance tariffs.

WHEREFORE, for the foregoing reasons, Spire Missouri Inc. respectfully requests that the Commission reconsider its Order issued on September 28, 2018 and, upon reconsideration, determine that the Company's compliance tariffs may become effective for service rendered on and after October 5, 2018.

Respectfully submitted,

SPIRE MISSOURI INC.

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served on Staff and the Office of the Public Counsel, on this 1st day of October 2018 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

/s/ Rick Zucker _____