

**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 Replacement ) Case No. GO-2019-0115  
Surcharge in its Spire Missouri East )  
Service Territory )

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

**STATEMENT OF POSITIONS OF THE OFFICE OF THE PUBLIC COUNSEL**

COMES NOW the Office of the Public Counsel (“OPC”) and for its *Statement of Positions*, states as follows:

Pursuant to the *Order Scheduling Evidentiary Hearing, Establishing Procedural Schedule, and Other Procedural Requirements* issued by the Commission on March 20, 2019, the OPC sets forth its statement of positions in a manner tracking the list of issues filed on April 1, 2019.

**A. Are all costs included in the Company’s ISRS filings in these cases eligible for inclusion in the ISRS charges to be approved by the Commission in this proceeding?**

No. See the OPC’s response to issue B for details.

**B. If a Party believes that certain costs are not eligible for inclusion in the ISRS charges to be approved by the Commission in this proceeding, what are those costs and why are they not eligible for inclusion?**

The OPC's position is that there are essentially two types of costs for which Spire seeks recovery that are not eligible for inclusion in the ISRS charges to be approved by the Commission in this proceeding. The first are any costs associated with replacements Spire made and are claiming as ISRS eligible under the definition of Utility Gas Plant Project found in section 393.1009(5)(a), except for those replacements made for the purpose of repairing leaks that are found in Spire's blanket work orders. With the exception noted above, these costs are not eligible for inclusion in the ISRS charges to be approved by the Commission because Spire has failed to present sufficient evidence that these replacements meet the statutory definition of "Utility Gas Plant Project" found in 393.1009(5)(a).

The second set of costs that the OPC argues are ineligible for recovery are all overhead costs that Spire claims and for which it seeks recovery. Again, Spire has failed to present any evidence that these costs are not already included in Spire's current base rates set in its most recent rate general rate case. Therefore, Spire has failed to demonstrate that the overhead it is claiming in this ISRS represents an incremental increase over the overhead already included in its current base rates.

In addition, the OPC also agrees with and supports the motion to dismiss portions of Spire's application that was filed by Staff. Therefore, to the extent that this motion to dismiss would result in the exclusion of costs from the ISRS charges to be approved by the Commission in these cases, the OPC argues those costs should be excluded as well.

## The OPC's Position Regarding Costs Related to Replacements

Spire, being the party who brought this request for an ISRS, bears the burden of proof in these cases. *Clapper v. Lakin*, 123 S.W.2d 27, 33 (Mo. 1938) (“The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue.”); Section 393.150.2 (“At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the gas corporation . . .”). Therefore, Spire has the burden of proving that the replacements it has made and is claiming as ISRS eligible under the definition of “Utility Gas Plant Project” found in 393.1009(5)(a) do in fact meet the definition of “Utility Gas Plant Project” found in 393.1009(5)(a). Thus, Spire must prove that these replacements were of “[m]ains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for ***existing facilities that have worn out or are in deteriorated condition.***” RSMo. Section 393.1009(5)(a) (emphasis added).

It is this last part of the statute that is the most troubling because, as explained in the testimony of OPC witness John Robinett, Spire has presented no evidence in these cases to prove that the vast majority of the replacements it made were of “existing facilities that have worn out or are in deteriorated condition.”<sup>1</sup> *Testimony of*

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<sup>1</sup> The OPC is excluding from this the pipes replaced for the purpose of repairing leaks that are found in Spire’s blanket work orders as the OPC considers these leaks themselves to be sufficient evidence of the deteriorated condition of the pipes. *Testimony of John A. Robinett*, pgs. 2, 16.

*John A. Robinett*, pgs. 2 – 11. Spire simply argues, instead, that every replacement it makes as part of its mandated replacement program is, by definition, worn out or deteriorated. *Testimony of John A. Robinett*, pg. 5. However this position has been directly contradicted the Missouri Supreme Court itself. *Verified Application & in re Liberty Energy (Midstates) Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520, 525 (Mo. banc 2015) (In which the Supreme Court gives an extend discussion of the meaning of the term “worn out or in a deteriorated condition” as used by the ISRS statute and concludes by stating that “[t]he PSC erred in relying upon its presumption that any change to a gas utility plant project qualifies for an ISRS surcharge. Only infrastructure which is in a worn out or deteriorated condition, as stated herein, is eligible for an ISRS surcharge. Hence, the PSC's order is not lawful because it is contrary to the plain language of the statute, which limits projects that qualify for an ISRS surcharge.”). Moreover, this point is true of **ALL** the replacements Spire made (excluding those made for the purpose of repairing leaks that are found in the blanket work orders) regardless of whether those replacements were of cast iron, bare steel, or plastic components.

Spire’s utter failure to meet its evidentiary burden regarding any of the pipe replacements it made and claimed as ISRS eligible under section 393.1009(5)(a) means that none of the costs related to those replacements are eligible for inclusion in this ISRS proceeding. The OPC would also, however, like to draw special attention to Spire’s attempt to argue the eligibility of the plastic components it replaced. Spire makes no attempt to suggest that these plastic components are worn out or

deteriorated and, thus, in any way different from those that the Western District previously ruled were not ISRS eligible. *Testimony of John A. Robinett*, pg. 12. Instead, Spire has produced numerous avoided cost studies that it argues show that it was more cost effective to make these replacements rather than reuse the existing plastic facilities. *Testimony of John A. Robinett*, pg. 12. However, this “cheaper to replace than reuse” argument cannot cure the underlying deficiency of these replacements, which is the simple fact that they do not meet the definition of “Utility Gas Plant Project” found in section 393.1009(5)(a) and thus are not ISRS eligible as explained by both the Missouri Supreme Court and the Western District Court of Appeals. *See Verified Application & in re Liberty Energy (Midstates) Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520 (Mo. banc 2015); *PSC v. Office of Pub. Counsel (In re Laclede Gas Co.)*, 539 S.W.3d 835 (Mo. App. W.D. 2017). The Commission should therefore ignore Spire’s attempt to unlawfully re-write the ISRS statutes based on its proposed “cheaper to replace than reuse” evidence.

### **The OPC’s Position Regarding Overhead Costs**

As explained in the testimony of the OPC’s expert witness Bob Schallenberg, overhead represents the ongoing business expenses not including or related to direct labor or direct materials used by a utility. *Testimony of Robert E. Schallenberg*, pg. 2. It is something that a utility must pay on an ongoing basis, regardless of how much or how little the company is producing. *Id.* This means that Overhead should generally be a fixed cost, *i.e.* one that normally do not increase significantly, and should also generally be quite small when compared to the other expense incurred by

a utility. In Spire's case, however, the overhead costs being charged to each individual ISRS project makes up a substantial (on average between 45% and 60%) amount of the total cost for that project. *Testimony of John A. Robinett*, pg. 15; *Testimony of Robert E. Schallenberg*, pg. 3. Such large amounts should be considered on their face unreasonable. *Testimony of John A. Robinett*, pg. 15 - 16; *Testimony of Robert E. Schallenberg*, pg. 3. Moreover, because Spire is already collecting overhead costs as part of its base rates, it should only be able to collect any overhead it has charged to these ISRS projects if it can prove that the overhead charged to the ISRS projects represent incremental increases brought on by the ISRS project itself. *Testimony of Robert E. Schallenberg*, pg. 3. In other words, Spire has to prove that it really is the case that for each dollar it spends on an ISRS project it has essentially been forced to independently increase its unrelated ongoing business expenses by an additional dollar because of that same ISRS project. Yet Spire has failed to provide any evidence to prove this point, which again means that it cannot meet its evidentiary burden to show that these overhead costs are, in fact, ISRS eligible. These costs are therefore not eligible for inclusion in the ISRS charges to be approved by the Commission in this proceeding.

### **The OPC's Position Related to Costs Previously Denied in Prior ISRS**

#### **Filings**

Finally, the OPC also notes that, to the extent Spire seeks to recover costs that the Commission denied as part of Spire's last ISRS filing, this request should be denied for all the reasons laid out in the *Motion to Dismiss Portions of Spire's*

