

**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-2018-0309**
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-2018-0310**
Replacement Surcharge in its Spire Missouri West)
Service Territory)

**PUBLIC COUNSELS MOTION TO DISMISS
SPIRE MISSOURI INC.'S INFRASTRUCTURE SYSTEM
REPLACEMENT SURCHARGE APPLICATIONS FOR ITS SPIRE MISSOURI EAST
AND SPIRE MISSOURI WEST SERVICE TERRITORIES**

COMES NOW the Office of the Public Counsel (“Public Counsel” or “OPC”) and for its Motion to Dismiss Spire Missouri’s *Applications to Change its Infrastructure System Replacement Surcharge* (“ISRS) for its *Spire Missouri East and Spire Missouri West Service Territor[ies]* states:

1. The Commission should dismiss Spire’s (“Spire” or “Laclede”) June 7 Applications to establish a new ISRS surcharge after its surcharges were reset to zero in Spire’s recent general rate cases, Case Nos. GR-2017-0215 & 0216.

2. With its filings of the applications for new ISRSs Spire is statutorily required to submit its supporting information. “*At the time* that a gas corporation files a petition with the commission seeking to establish or change an ISRS, it *shall* submit proposed ISRS rate schedules and *its supporting documentation* regarding the calculation of the proposed ISRS with the petition and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules, and its supporting documentation.” Section 393.1015.1(1)¹

¹ All statutory references are to the Revised Statutes of Missouri as currently supplemented.

3. In its Recommendation, Staff sets out the information Spire filed long after it filed its applications: in one case, 30 days late: July 3, 2018 - A sample of invoices for October 2017 through April 2018 ; July 18, 2018 - Work order authorizations over \$50,000 for May and June 2018; July 26, 2018 – Work order authorizations over \$25,000 for May and June 2018; and July 27, 2018 – Work order charge details for May and June 2018

4. The statute requires that only “[i]f the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, shall [it] enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1009 to 393.1015.” Section 393.1015.1(4) RSMo.

5. While Spire’s failure to submit its supporting documentation with its applications is a fully sufficient ground for the Commission to dismiss Spire’s applications, there are additional deficiencies that support dismissal.

6. The applications include claims for the costs of infrastructure replacements which the Western District has determined do not qualify for ISRS recovery. The Court held, “Significant to this appeal, Section 393.1009(1)(a) sets forth the ISRS-eligibility requirements for replacement projects. Under that provision, cost recovery through an ISRS surcharge is available for “[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*[.]” *PSC v. Office of Public Counsel (In re Laclede Gas Co.)*, 539 S.W.3d 835 (Mo. App. W.D. 2017)(emphasis added by Court).

7. The Court specifically identified the Commission’s errors:

First, the Commission's order allowed cost recovery through the adjustment to the ISRS rate schedules for the replacement of plastic components that were not in a worn out or deteriorated condition. *Id.* at 837.

Second, "the Commission's order does not identify a single "state or federal safety requirement" that mandated the replacement of the plastic mains and service lines or, for that matter, replacement of the neighborhood systems as a whole. *Id.* at 840.

Third, only "those costs associated with government-mandated relocations" may be included. *In re Laclede Gas* 539 S.W.3d 838.

8. Even a cursory review of the applications demonstrates Spire has included the very same type of replacement of plastic pipe the Court rejected. "In its filing, Spire does not attest "that the plastic mains and service lines were not in a worn out or deteriorated condition, which "is a gradual process that happens over a period of time rather than an immediate event." *In re Laclede Gas* 539 S.W.3d 839. Instead, Spire files the exact same plastic infrastructure the Court rejected as failing to qualify under the ISRS statute.

9. The Western District's reversal of the Commission's orders in Laclede's 2016 and 2017 ISRS filings supports Public Counsel's motion that the Commission dismiss these applications for containing substantial amounts of ISRS infrastructure ineligible for ISRS recovery. The Court firmly rejected all Commission arguments for approval of Laclede's 2016 ISRS Application:

a. The Court rejected the "patches" argument. The Commission's reasoning that patched lines are more "vulnerable . . . to leaks" and could result in "degradation of safety" is *not a relevant consideration* under section 393.1009(5)(a), which unambiguously requires that the replacement be done to "comply with state or federal safety requirements." *Id.* at 840. (Emphasis supplied).

b. The Court in its statutory analysis not only analyzed the "worn out or deteriorated" requirement, but also the "two requirements for component replacement":

The primary rule of statutory interpretation is to effectuate legislative intent through reference to the plain and ordinary meaning of the statutory language. This Court must presume every word, sentence[,], or clause in a statute has effect, and the legislature did not insert superfluous language." [Liberty Energy, 464 S.W.3d at 524-25](#) (citations omitted). [Section 393.1009\(5\)\(a\)](#), *supra*, clearly sets forth two requirements for component replacements to be eligible for cost recovery under ISRS: (1) the replaced components must be installed to comply with state or federal safety requirements and (2) the existing facilities being replaced must be worn out or in a deteriorated condition.

c. In its statutory analysis, the Court also rejected a third Commission argument that a utility required an incentive to timely replace deteriorated pipeline:

The Commission's argument that "not allowing recovery of the portions of the main replacement projects that incidentally consist of plastic pipe would be a disincentive to the gas utilities to replace deteriorated pipelines containing portions of plastic" carries no weight and reflects a misapprehension of the breadth of ISRS-eligibility.

The purpose of an ISRS surcharge is to allow a utility to "timely recover its costs for certain government-mandated infrastructure projects without the time and expense required to prepare and file a general rate case[.]" [*Laclede Gas Co. v. Office of Public Counsel*], 417 S.W.3d 815, 821 (Mo. App. W.D. 2014). ISRS-eligibility under section 393.1009(5)(a) is dependent on a project being imposed on a gas utility by a government-mandated safety requirement, and it is the existence of that obligation that provides the only motivation or incentive relevant to our analysis.

In re Laclede Gas Co. 539 S.W.3d at 840.

10. The Court explained the reversible error in the Commission's Order approving Laclede's ISRS filing:

[T]he Commission's order does not identify a single "state or federal safety requirement" that mandated the replacement of the plastic mains and service lines or, for that matter, replacement of the neighborhood systems as a whole. The Commission's reasoning that patched lines are more "vulnerable . . . to leaks" and could result in "degradation of safety" is not a relevant consideration under [section 393.1009\(5\)\(a\)](#), which unambiguously requires that the replacement be done to "comply with state or federal safety requirements." Although Laclede has a cast iron main replacement program pursuant to [4 C.S.R. 240.030\(15\)](#), no state or federal safety requirement has been cited mandating the manner and extent of the replacement strategy employed by Laclede. Replacement programs undertaken by a gas utility that incidentally improve

safety, but are not grounded in a government-mandated requirement, fail to trigger cost recovery under ISRS.
In re Laclede Gas Co. 539 S.W.3d at 840.

11. Spire’s casual reference to the Commission’s replacement requirements at rule 4 CSR 240-40.030(15) also does not satisfy the Court’s directive: “Although Laclede has a cast iron main replacement program pursuant to *4 C.S.R. 240.030(15)*, no state or federal safety requirement has been cited mandating the manner and extent of the replacement strategy employed by Laclede. Replacement programs undertaken by a gas utility that incidentally improve safety, but are not grounded in a government-mandated requirement, fail to trigger cost recovery under ISRS that Commission’s rules.” *In re Laclede Gas Co.* 539 S.W.3d at 840. This failure also requires the Commission dismiss Spire’s Applications.

WHEREFORE for all the reasons listed above, Public Counsel asks the Commission to Dismiss Spire’s Applications as contrary to the ISRS statutes and the case law noted above.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY: /s/ Lera L. Shemwell
Lera L. Shemwell
Senior Counsel (Bar #43792)
P. O. Box 2230
Jefferson City, MO 65102
(573) 751-5565 (Telephone)
(573) 751-5562 (Fax)
lera.shemwell@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 21st day of August 2018.

 /s/ Lera Shemwell