

3. The Western District has reviewed and remanded the Commission Report and Order and issued its mandate in no uncertain terms: The Commission's Report and Order concluding that "the plastic pipe in this case was an integral component of the worn out and deteriorated cast iron and steel pipe" was wrong. The "effort to assign ISRS eligibility to plastic pipes that are not worn out or deteriorated by evaluating an entire neighborhood system as a singular unit finds no support in the plain language of section" 393.1009(5)(a).5 . 2017 Mo. App. LEXIS 1183, *[4].

4. The court held "Section 393.1009(5)(a), 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. And, "our Supreme Court has found this requirement to be mandatory and has interpreted it narrowly."

5. The costs relate to the replacement of plastic pipes were ineligible for recovery under the ISRS statuteorn out. "No party contests 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." *Liberty Energy*, 464 S.W.3d at 525. This creates a challenge for Laclede because our Supreme Court has found this requirement to be mandatory and has interpreted it narrowly. *PSC v. Office of Pub. Counsel (In re Laclede Gas Co.)*, No. WD80544, 2017 Mo. App. LEXIS 1183, at [*6-7] (App. Nov. 21, 2017)

6. The cost of replacing plastic pipe may not be recovered under the ISRS statutes:

[W]e do not believe that section 393.1009(5)(a) allows ISRS eligibility to be bootstrapped to components that are not worn out or deteriorated simply because that are interspersed within the same neighborhood system of such components being replaced or because a gas utility is using the need to replace worn out or deteriorated components as an opportunity to redesign a system (*i.e.*, by

changing the depth of the components or system pressure) which necessitates the replacement of additional components. 2017 Mo. App. LEXIS 1183 *[8].

7. The statute provides two remedies for overcollection. First, Section 393.1015 RSMo (2016) provides, in the event the commission disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible infrastructure system replacements previously included in an ISRS, the gas corporation shall offset its ISRS in the future as necessary to recognize and account for any such overcollections.” Second, the statute, in Section 393.1012.1 provides for a refund, “ISRS revenues shall be subject to a refund based upon a finding and order of the Commission to the extent provided in subsections 5 and 8 of section 393.1009.” To these statutory requirements we can also add the mandate of the Western District that finds Laclede’s collection of ISRS unlawful because it does not meet 393.1009(5)(a) or (b).

8. The Commission ordering an offset in this “subsequent rate case” is the only opportunity to assess the over-recovery against future ISRS costs. Without a determination in this rate proceeding, the Commission must comply with the Courts order by providing a customer refund.

9. The idea that Mark Lauber’s testimony (Exh. 49) in favor of inclusion of these costs in ISRS does *anything* to address or overcome the Western District’s findings or its mandate to this Commission is ludicrous. The Court made no exception for prudence arguments or any other Commission or Company argument before it.

10. Public Counsel does not need to dispute Mr. Lauber’s testimony; the Western District has already done so. The Court did not find the replacements to be “phantom.” It found them to be unlawful. The Court was wholly *unpersuaded* by the Company’s “real world arguments” and has already disposed of them. 2017 Mo. App. LEXIS 1183 *[8].

11. Spire argues the Commission may not reopen the record at this time. There is no need for the Commission to take any additional evidence. There already sufficient record evidence upon which a decision concerning the amount of plastic pipe that has been unlawfully included in rates may be made. GO-2016-0333, GO-2017-0202, GO-2016-0332 and GO-2017-0201. It is the statute, and now the Western district’s remand, that directs how the Commission should address this overcollection, and Section 393.10015.8.

12. Notably, the Commission has already reopened the record, and held a hearing which lacked constitutionally required due process notice. On February 1, the Commission scheduled and held an “additional hearing.” *Notice Describing Procedures for Hearing Regarding Effect of Tax Cuts and Jobs Act*. The additional hearing was to be related to the “cost of service as a result of the Tax Cuts and Jobs Act for each of Spire’s operating units.” *Id.* The Commission heard evidence outside the scope of the subject matter described in the Commission’s February 1, 2018, order. Transcript - Volume 23 (Hearing 2-5-18).

WHEREFORE, Public Counsel respectfully requests the Commission Amend its Report and Order in this matter to respond to the Western District’s mandate reversing the Commission’s Report and Order (2017 Mo. App. LEXIS 1183, [*1-10]) and remanding “for further proceedings consistent with this opinion. (2017 Mo. App. LEXIS 1183, [*10].)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile, or electronic mail or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

Lera L. Shemwell