

**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 Surcharge in its Spire Missouri East Service Territory	) ) ) ) ) )	Case No. GO-2019-0356
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In the Matter of the Application of Spire Missouri, Inc. to Change its Infrastructure System Replacement Surcharge in its Spire Missouri West Service Territory	) ) ) ) ) )	Case No. GO-2019-0357
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**MOTION TO COMPEL AND MOTION FOR EXPEDITED TREATMENT**

**COMES NOW** the Office of the Public Counsel (“OPC”) and, for its *Motion to Compel and Motion for Expedited Treatment*, states as follows:

1. The OPC issued data request numbers 0013 to 0023 to the Missouri Public Service Commission’s Staff (“Staff”) on September 4, 2019, in each of the above-referenced cases.
2. Staff responded with objections to data requests 0016, 0017, and 0018 on September 10, 2019.
3. The data requests and related objections are included in the table below:

Data Request Number	Request	Objection
0016	4. Has Spire Missouri ever reported that all of the cast iron mains currently in service in each of its service territories are worn out or in a deteriorated	Question as to what Spire Missouri has ever reported to Safety Engineering Staff is overbroad and vague. Question is irrelevant and not reasonably

	condition to the MoPSC Gas Safety Department? a. If so what actions has the Gas Safety Department taken in response to this report?	calculated to lead to probative evidence that determines whether the ISRS costs sought for recovery in the application are eligible under the ISRS statute.
0017	5. Has Spire Missouri ever reported that all of the non-cathodically protected steel mains currently in service in each of its service territories are worn out or in a deteriorated condition to the MoPSC Gas Safety Department? a. If so what actions has the Gas Safety Department taken in response to this report?	Question as to what Spire Missouri has ever reported to Safety Engineering Staff is overbroad and vague. Question is irrelevant and not reasonably calculated to lead to probative evidence that determines whether the ISRS costs sought for recovery in the application are eligible under the ISRS statute.
0018	Has Spire Missouri ever reported that all of the non-cathodically protected steel services currently in service in each of its service territories are worn out or in a deteriorated condition to the MoPSC Gas Safety Department? a. If so what actions has the Gas Safety Department taken in response to this report?	Question as to what Spire Missouri has ever reported to Safety Engineering Staff is overbroad and vague. Question is irrelevant and not reasonably calculated to lead to probative evidence that determines whether the ISRS costs sought for recovery in the application are eligible under the ISRS statute.

4. The OPC disagrees with Staff's rationales set forth in the objections.

5. The OPC conferred with Staff counsel by telephone in accordance with

Commission rule 4 CSR 240-2.090(8)(a) on September 11, 2019, but was unable to resolve the dispute. Pursuant to Commission rule 4 CSR 240-2.090(8)(b), the OPC

then held a telephone conference between it, Staff, and the presiding officer in this case on September 13, 2019, but still was unable to resolve the dispute.

6. The OPC now moves for the Commission to compel Staff to provide answers to the above referenced data requests as Staff's objections to those requests are legally unsound for the following reasons.

**All three data requests seek relevant information**

7. Spire's application to change its ISRS in the above-referenced cases is premised, in part, on seeking recovery for replacement of numerous pipes that it claims are ISRS eligible "[g]as utility plant projects" as defined in section 393.1009(5)(a), in that they are "[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."

8. Based on the plain language of this statute, Spire must prove that its pipes are, in fact, "worn out or are in deteriorated condition" before it can recover the cost to replace those pipes. *See Verified Application & in re Liberty Energy (Midstates) Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520, 524-25 (Mo. banc 2015); *PSC v. Office of Pub. Counsel (In re Laclede Gas Co.)*, 539 S.W.3d 835 (Mo. App. W.D. 2017).

9. The question posed in all three of the OPC's data requests is directly relevant to determining whether Spire's pipes are "worn out or are in deteriorated condition" as they are literally asking whether Spire has ever reported to the Missouri Gas Safety Department that its pipes are "worn out or are in deteriorated condition."

10. These questions were posed to the Missouri Gas Safety Department for several reasons. The first is because Spire witness Craig R. Hoeflerlin references the Missouri Gas Safety Department numerous times in his direct testimony filed in support of Spire's application.

11. For example, on pages five through six of Mr. Hoeflerlin's direct testimony he discusses the legal mandates that have been imposed on the company with regard to pipe replacement. In particular, Mr. Hoeflerlin states:

As part of the 2002 Pipeline Safety Improvement Act, Part 192 was updated to include new requirements related to gas transmission pipelines. The 2006 Pipeline Inspection, Protection, Enforcement, and Safety Act resulted in additional changes to Part 192, including the requirement of the Company to develop and implement a Distribution Integrity Management Program ("DIMP"). Consistent with this mandate, which has been incorporated in the Commission's own safety rule, Spire Missouri's DIMP Plan identifies and prioritizes the risks to the Company's pipeline system. . . . **The Commission's Gas Safety Staff is responsible for enforcing these regulations.**

12. Mr. Hoeflerlin again references the Missouri Gas Safety Department on page nine of his direct testimony in the following question and answer:

**Q. HAS THE MISSOURI PUBLIC SERVICE COMMISSION GAS SAFETY STAFF MADE ANY RECOMMENDATIONS ON SPIRE MISSOURIS REPLACEMENT PROGRAMS?**

A. The Commission's Gas Safety Staff is continually aware of the ongoing pipe replacement work being performed by Spire Missouri. To my knowledge, the Commission's Gas Safety Staff has never raised any concerns with the pace or nature of this work.

13. Because Spire has chosen to make the role and activities of the Missouri Gas Safety Department a relevant part of these ISRS proceedings, the OPC is entitled

to know what Spire has reported to the Gas Safety Department regarding the condition of its pipes.

14. This leads to the second reason for why the OPC asked the Missouri Gas Safety Department what reports Spire has made regarding the condition of its pipe infrastructure and the second reason why these questions are relevant: these questions address the credibility of the claims Spire made in its ISRS applications.

15. By requesting recovery of the cost of pipe replacements made in these ISRS proceedings, Spire has tacitly claimed that all the pipes it replaced and seeks recovery for are “worn out or are in deteriorated condition” as required by section 393.1009(5)(a).

16. The OPC is seeking to know if Spire has been consistent in making this claim across multiple Staff departments and Commission proceedings. If Spire has not been consistent (that is, has not informed the Missouri Gas Safety Department that all of its cast iron and steel pipes are worn out or in a deteriorated condition as it claims in this ISRS application), then there is an argument that Spire has been withholding material information from the Commission, which goes directly towards Spire’s credibility and the credibility of its witnesses.

17. The parties, of course, will be free to argue the weight of such evidence, but there can be no question that it meets the bare threshold of relevancy. *Shallow v. Follwell*, 554 S.W.3d 878, 883 (Mo. 2018) (“Evidence is logically relevant if it tends to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” quoting

*State v. Davis*, 318 S.W.3d 618, 639 (Mo. banc 2010)). *Mitchell v. Kardesch*, 313 S.W.3d 667, 675 (Mo. banc 2010) ("As a general proposition, the credibility of witnesses is always a relevant issue in a lawsuit." (quoting *State v. Smith*, 996 S.W.2d 518, 521 (Mo. App. 1999)(emphasis added)).

18. Moreover, the Missouri Rules of Civil Procedure state that "[i]t is not ground for objection [to a discovery request] that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Rule 56.01 (emphasis added). Therefore, as the evidence that the OPC is requesting at least appears reasonably calculated to lead to the discovery of admissible evidence related to the condition of Spire's pipes and the credibility of Spire's witnesses (based on the argument the OPC outlined above), Staff's objection must fail.

**All three data requests are neither overbroad nor vague**

19. All three of the OPC's data requests are limited to inquiring of Staff whether it has received certain specific information from Spire and, if so, how it responded. There is nothing vague about these questions. The OPC simply wants to know if Spire has ever told Staff's Gas Safety Department that its cast iron and steel pipes are "worn out or in a deteriorated condition."

20. Nor are these questions overbroad. If Spire did in fact tell Staff's Gas Safety Department that a large percentage of its distribution system was "worn out or in a deteriorated condition," then the OPC presumes this would have affected the Staff's Gas Safety Department's enforcement of Spire's Distribution Integrity

Management Program that Spire witness Mr. Hoeflerlin referenced in his direct testimony.

21. In other words, such a report by Spire should be easy for Staff to find.

22. However, in the spirit of compromise and the interest of resolving this dispute quickly, the OPC is willing to limit the time frame for its request to the last ten years. As a result, the OPC's data requests would be modified to read as follows:

OPC Data Request 16: Has Spire Missouri ever reported that all of the cast iron mains currently in service in each of its service territories are worn out or in a deteriorated condition to the MoPSC Gas Safety Department within the last ten years? a. If so what actions has the Gas Safety Department taken in response to this report?

OPC Data Request 17: Has Spire Missouri ever reported that all of the non-cathodically protected steel mains currently in service in each of its service territories are worn out or in a deteriorated condition to the MoPSC Gas Safety Department within the last ten years? a. If so what actions has the Gas Safety Department taken in response to this report?

OPC Data Request 18: Has Spire Missouri ever reported that all of the non-cathodically protected steel services currently in service in each of its service territories are worn out or in a deteriorated condition to the MoPSC Gas Safety Department within the last ten years? a. If so what actions has the Gas Safety Department taken in response to this report?

23. The OPC has already expressed its willingness to modify its request both to Staff counsel and during the discovery conference call with the presiding officer in this case, and will continue to stand by this offer if it resolves the dispute.

### **Request for expedited treatment**

24. Due to the statutory restraints requiring the Commission to issue an order within 120 days after the filing of the ISRS petition, there is very little time to

resolve this motion in a manner that would compel discovery before the date on which the OPC would otherwise be required to submit its testimony.

25. The OPC therefore requests that the Commission expedite ruling on this motion to allow for it to be taken up at the agenda meeting scheduled for September 18, 2019.

26. If the Commission acts by this date, then the OPC may be able to rely on the information provided by Staff in preparing its testimony for this case. If the Commission does not act by this date, it is likely that the OPC will not receive the information it has requested before it is required to submit its testimony.

27. This request was filed the same day that the telephone conference between OPC, Staff, and the presiding officer in this case was held pursuant to Commission rule 4 CSR 240-2.090(8)(b), and thus has been filed as soon as possible.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission compel Staff to provide the information that the OPC has requested in data requests 0016, 0017, and 0018 and provide such other relief as the Commission deems appropriate.

Respectfully submitted,  
OFFICE OF THE PUBLIC  
COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this thirteenth day of September, 2019.

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/s/ John Clizer