

**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-2019-0115**  
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-2019-0116**  
Replacement Surcharge in its Spire Missouri )  
West Service Territory )

**SPIRE MISSOURI INC.’S MOTION FOR RECONSIDERATION OF ORDER STATING  
A NEED FOR 10 DAY EFFECTIVE DATE ON COMPLIANCE TARIFFS**

**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 files this motion asking the Commission to reconsider its position that a tariff compliance order have a 10 day effective date. In support thereof, the Company states as follows:

**BACKGROUND**

1. On January 14, 2019, the Company filed ISRS petitions on behalf of Spire East and West. Pursuant to 393.1015.2(3)<sup>1</sup>, the Commission must issue an order to become effective within 120 days, or by May 14, 2019.
2. On May 3, 2019, the Commission issued a Report and Order on the petitions, effective May 14, 2019.
3. On May 6, Spire Missouri filed 30-day tariffs in compliance with the May 3 Report and Order, along with a Motion for Expedited Treatment seeking tariff approval by the 120-day ISRS deadline of May 14.

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<sup>1</sup> Sections 393.1009-1015 RSMo are commonly referred to as the “ISRS Statute.”

4. On May 7, the Commission issued an Order (the “May 7 Order”) directing Staff to file a recommendation by noon on May 9, with objections to the tariffs or Spire Missouri’s Motion for Expedited Treatment due by noon on May 10.

5. Prior to noon on May 9, Staff filed its recommendation confirming the accuracy of the Company’s May 6 tariff filing and indicating no objection to the Company’s request for expedited treatment. Staff recommended that the Commission order an effective date for the compliance tariffs that the Commission finds to be appropriate. Prior to noon on May 10, OPC filed its response stating that it objected to certain costs and planned to file an application for rehearing prior to the May 14 effective date of the May 3 Report and Order. OPC did not indicate any specific amount by which the tariffs failed to implement the Report and Order. OPC did not state in its Response any objection to the motion for expedited treatment.

6. Given the fact that no party has objected to the motion for expedited treatment, Spire Missouri requests that the tariff be made effective by May 14, which date represents the end of the 120-day ISRS statutory period.

7. In the event the Commission believes a 10-day effective date for the tariff compliance order is still necessary, the Company objects for the reasons stated below.

8. In the May 7 Order, the Commission stated its belief that the tariff compliance order requires a 10-day effective date, citing *State ex rel. Office of Public Counsel v. Pub. Serv. Comm’n of State*, 409 S.W.3d 522, 528 (Mo.App. W.D. 2013). If the Commission issues a tariff compliance order with a 10-day effective date, the Company will not be able to begin charging the new ISRS rates before the 120-day ISRS deadline expires. Because the Commission believes a 10-day effective date is required for a tariff compliance order, the Commission asked Staff and OPC to state whether they are willing to waive the 10-day period.

9. Spire Missouri respectfully submits that the Commission should approve the compliance tariffs effective by May 14, 2019, for two reasons: (i) the ISRS Statute's 120 day window for the effective date of an order is not intended to be elongated by the ministerial filing of compliance tariffs; and (ii) a 10-day effective date requirement is intended for contested cases, and not ministerial matters like compliance tariff filings. In the end, the May 14 effective date for compliance tariffs is a legal requirement of the ISRS Statute, and is not subject to the discretion of other parties to the case.

### ARGUMENT

#### **The 120-day requirement of the ISRS Statute applies to both the Order in the contested case and the tariff compliance order.**

10. A failure to approve ISRS rates by May 14, 2019, violates the 120-day mandate of the ISRS Statute. Section 393.1015.2(3) 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.” The Commission's position is that it met the deadline by having the underlying order become effective by May 14. The logical extension of this reasoning is that the Commission is free to approve compliance tariffs effective at some date after May 14, using the discretion inherent in deciding a motion for expedited treatment.<sup>2</sup> It is unreasonable to assume that the legislature would require that revenues be effective within 120 days, but not the rates charged to collect those revenues. Without the ability to charge the rates, there will be no revenues on the 120<sup>th</sup> day, frustrating the intention of the legislature to have a 120-day process.

11. The Commission's approach circumvents the Legislature's intent by leaving the right to assess ISRS charges open-ended. Once the report and order is effective, the compliance

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<sup>2</sup> See 4 CSR 240-2.080(14)

tariffs could be delayed by 30 days or more, 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.

**There is no 10-day effective date requirement for ministerial tariff compliance orders.**

12. The Commission cites the Western District's 2013 *Office of Public Counsel* opinion in support of its belief that an effective date of less than 10 days is unreasonable. However, the Western District issued a subsequent decision in 2016 that is directly on point: *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, 783-86 (Mo. App. 2016). In that case, the Court established that the report and order in a *contested case* is the significant legal event that requires a reasonable time, such as 10 days, to file an application for rehearing. The Court found that the compliance tariff approval was a *non-contested case* that simply implemented the underlying report and order. The compliance tariff process does not require the same due process protections as the contested case order, and is not subject to a 10-day hiatus between order date and effective date.

13. In the present case, the Commission issued its Report and Order on May 3, 2019, with an effective date of May 14, thus complying with the 10-day requirement for contested case orders. The Commission is not required to afford 10 days for the effective date of the compliance order that merely implements the decision in the contested case.

14. Affording a 10-day deadline for the tariff compliance order is not in and of itself unlawful or unreasonable, except where it causes the Commission to exceed the 120-day period allotted by the ISRS Statute. If the Commission orders a 10-day delay in the effective date of the

ISRS tariff, the Commission will have violated a real deadline in order to honor a non-existent deadline.

**WHEREFORE**, for the foregoing reasons, Spire Missouri Inc. respectfully requests that the Commission issue its order approving the compliance tariffs effective on or before May 14, 2019.

Respectfully submitted,

SPIRE MISSOURI INC.

**/s/ Michael C. Pendergast #31763**

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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 10th day of May, 2019 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

**/s/ Rick Zucker**

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