BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Spire Missouri Inc. to Establish an Infrastructure System Replacement Surcharge in its Spire Missouri East Service Territory	))))	**File No. GO-2018-0309**
In the Matter of the Application of Spire Missouri Inc. to Establish an Infrastructure System Replacement Surcharge in its Spire Missouri West Service Territory	))))	**File No. GO-2018-0310**

SPIRE MISSOURI INC'S APPLICATION FOR REHEARING AND CONTINGENT REQUEST FOR AUTHORIZATION TO DEFER REVENUE AMOUNTS EXCLUDED FROM ISRS RATES PENDING SATISFACTION OF NEW EVALUATION REQUIREMENTS

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, pursuant to Section 386.500.1 RSMo and 4 CSR 240-2.160 of the Commission's Rules, submits this Application for Rehearing of the Commission's Report and Order issued on September 20, 2018 (the "Order"), and this Contingent Request for Authorization to Defer for Potential Recovery the Costs excluded from ISRS Rates Pending Satisfaction of New Evaluation Requirements. In support thereof, Spire Missouri States as follows:

A. APPLICATION FOR REHEARING

1. In the Order, the Commission determined, among other things, that Spire East and West had failed to demonstrate the eligibility of ISRS investments representing approximately $4 million in ISRS revenues. In support of this determination, the Commission relies principally on the November 21, 2017 Opinion (the "Opinion") of the Western District Court of Appeals which reversed and remanded the Commission's Report and Order in Case Nos. GO-2016-0332 and GO-2016-0333, to the extent that the Commission allowed ISRS charges to recover the cost to replace

plastic components that were not in a worn out or deteriorated condition. The Court recognized that replacement of worn out or deteriorated facilities will at times require the replacement of nearby components that are not worn out or deteriorated.[1] The Court also recognized that some plastic facilities may themselves be worn out or deteriorated.[2] The Court made no finding, however, as to the amount of cost to replace plastic facilities that were not worn out or in a deteriorated condition, or how to determine that amount, but instead remanded the cases to the Commission to determine the extent of those costs.

2. As discussed below, the Company appreciates the fact the Commission set forth a roadmap in its Order that could be followed by the Company to confirm the eligibility of ISRS installation costs in those instances where some plastic facilities are retired or replaced. The Company has also filed tariffs in compliance with the Commission's Order and requested that they become effective no later than October 5, 2018 which is the statutory deadline for implementing the Company's ISRS filings as modified by the Commission.

3. The Company conceptually agrees with the primary components of the roadmap provided by the Commission in its Order for establishing the ISRS eligibility of investments that involved the retirement of plastic facilities. The Company believes the Commission's incorporation in the roadmap of the kind of engineering analysis that was performed by the Company to demonstrate the actual impact of plastic retirements on ISRS costs is particularly helpful. Between now and its next ISRS filing the Company intends to the work with the Commission Staff and other interest parties to build upon this roadmap so that it can be more efficiently and effectively implemented in future ISRS filings.

[1] Opinion, p. 6
[2] *Id.*, p. 5

4. In the meantime, however, the Company must respectfully disagree with the Commission's exclusion of approximately $4 million in ISRS revenues in these cases on the grounds that the such a decision is unlawful, unreasonable, arbitrary and capricious and was decided in a in a manner that violated the Company's due process rights to a full and fair hearing held at a meaningful time and in a meaningful manner. The Commission should grant rehearing and approve recovery of the ISRS costs that have been excluded. Failing that, the Commission should authorize the Company to defer for potential recovery in its next ISRS filing the costs and revenues excluded in these cases subject to the Company satisfying the new standard for ISRS inclusion first articulated by the Commission in its Order.

5. The Commission's decision is unlawful because it fails to comply with the legal principles set forth in in the Opinion, including the specific remand instructions given to the Commission. As the parties to this case unanimously agreed, the Opinion directed the Commission to determine what costs, if any, were included in the Company's ISRS charges relating to the replacement of plastic facilities that were not worn out or in a deteriorated condition. In its Order, however, the Commission decided not to use, at least for purposes of these cases, the only methodology that actually quantified the impact of plastic retirements on ISRS costs in favor of one that even its own proponent freely conceded was never designed to -- and in fact did not – address the ultimate question of what impact, if any, the replacement of plastic facilities had on the Company's ISRS costs and charges.[3] Such actions by the Commission resulted in costs being

[3]As the Company discussed at length in its Brief, Staff witness Bolin repeatedly criticized the percentage method endorsed by the Commission in its Order, and testified on cross-examination that she did not know whether or to what extent the percentage of plastic retired on a particular project actually affected the ultimate cost of that project. In fact, it was apparent that Ms. Bolin had no idea what the cost drivers were for any of the projects for which she excluded costs based on these simple percentages. (Tr. 451, 469-71). Staff witness Sommerer also conceded that the percentage of plastic in the old main had no effect on the cost of installing the new main, because the cost to install new main that bypassed the old main would be the same regardless of the amount of interspersed plastic in the old main. (Tr. 497-498). This truism, which was not even acknowledged by the Commission, directly contradicts Staff's percentage based methodology.

excluded from the Company's ISRS even though such costs were not in any way caused by the retirement of plastic facilities – a result that is clearly not in keeping with the Court's remand instructions.

6. The rationale given by the Commission for making this determination was also arbitrary and unsupported by competent and substantial evidence in the record. When the Commission decided that a new evidentiary hearing with an expedited schedule was necessary to assess the plastics issue, the Company responded by producing two highly qualified engineering witnesses who conducted 9 additional engineering analyses of specific ISRS projects. The engineering analyses used the very same sample of ISRS projects that was handpicked by OPC in the prior ISRS cases and cited by the Court of Appeals in its Opinion. Similar to the finding presented at the rate case, no party to this proceeding challenged either the accuracy or validity of these analyses or the results they produced – results which clearly supported the Company's sworn testimony that the retirement of plastic facilities served to reduce rather than increase the Company's ISRS costs and charges, thus showing that the full costs of these projects were indeed ISRS eligible. Nor did any party challenge the sworn testimony of the Company's witnesses that the sample of projects used by the Company was representative of other ISRS projects and therefore produced results that would be consistent across other projects. In fact, Staff witness Sommerer testified in response to a question from Commissioner Hall that the "likely result" of extending the same analysis to all ISRS projects would be "to show that *virtually all* of the plastic replacements resulted in a cost reduction."[4]

7. Despite this record evidence, the Commission nevertheless determined in its Order that the number of projects and work orders analyzed by the Company were "far too few" to

[4] Tr. p. 498, line 23 to p. 499, line 2 (*emphasis supplied*).

support the proposition that the retirement of plastic facilities reduced rather than increased its ISRS costs and charges. (Order, p. 15). Nowhere in its Order does the Commission explain, however, what academic or scientific literature it consulted, what expert advice it received, or how it otherwise arrived at this extra-record conclusion. All of these critical considerations are simply unexplained and unknown. In the end, while the Commission properly recognized the validity of the Company's engineering analysis, it arbitrarily determined that the Company's undisputed evidence was inadequate solely because the analysis was not performed on all ISRS projects.[5]

8. The Commission's rejection of using a representative sample to determine the impact of plastic retirements on ISRS costs is also at odds with the widely accepted use of such samples when evaluating large data bases like those involved in an ISRS filing. Representative samples have been regularly used by internal and external auditors, including the Commission Staff, to evaluate financial transactions that are too numerous to audit individually.[6] They have also been used to evaluate the operational characteristics of utility infrastructure, including their fitness for a particular purpose. For example, one of the most critical components of utility infrastructure are the meters by which customers are billed for their usage of utility service. For many years now, the Commission has permitted electric and gas utilities to use a statistical sampling of a limited number of meters to verify the accuracy of a significantly larger population

[5]The Commission apparently utilized the same new standard in upholding Staff's proposal to remove the cost of blanket work orders in the same proportion as the plastic it found in the main replacement programs. Again, the record evidence showed that these blanket work orders, which were not related to the Company's cast iron or bare steel replacement programs, contained numerous small projects covering facilities that needed to be replaced because they had become worn out or were in a deteriorated condition. Such work is ISRS-eligible as verified by Company witness Glenn Buck's analysis of a typical blanket work order, which determined that out of more than 100 tickets for individual jobs, every replacement was done for a safety-related reason, including leaks, corrosions and removal of copper pig tails. (Ex. 6, p. 6). The Commission simply ignored the Company's sample evidence and instead adopted a Staff approach that was unsupported by the competent and substantial evidence on the record and was arbitrary and capricious.

[6]*See e.g.* ***Re: United Telephone Company***, Case Nos. TR-93-181 and TO-93-309, Report and Order issued October 27, 1993, for a discussion of various sampling methods used to calculate Cash Working Capital in utility rate cases.

of meters in the same vintage or class.[7] Given this routine use by the Commission of representative sampling for various regulatory purposes, and the undisputed testimony that the Company's use of a sample of ISRS projects was representative of the results that would be experienced across other ISRS projects, the Commission decision to summarily reject the sample employed for assessing the impact of plastic retirements on ISRS costs was arbitrary, capricious and unreasonable.[8]

9. The Commission also erred in introducing this entirely new standard after the close of the evidentiary record and the briefing process in these cases. By doing so, the Commission denied the Company any opportunity to rebut this determination with evidence or otherwise address it. The end result is that the Company was denied its due process right to have a full and fair hearing on this issue at a meaningful time and in a meaningful manner.[9]

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[7] See ***Re: Union Electric Company, d/b/a AmerenUE,*** Case No. EO-2001-521, *Order Granting Variance* issued September 11, 2001; ***Re: Atmos Energy Corporation,*** GE-2003-0007, *Order Granting Variance* issued August 20, 2002, ***Aquila, Inc.***, GE-2006-0330, *Order Granting Variance* issued March 30, 2006.

[8]The Commission's determination that the representative sample used by the Company was inadequate and that the Company should have conducted such an analysis on all ISRS projects established a standard that could not possibly have been satisfied by the Company given the time constraints of these cases. There were only 5 business days between the date the Commission determined that a new evidentiary hearing on the plastic issue should be held and when testimony was due. In that limited amount of time, it was challenging enough for the Company to produce four witnesses and conduct 9 additional engineering analyses of ISRS projects. It would have been impossible within that time frame to conduct additional analyses on hundreds of additional ISRS projects. This is especially true in the absence of any communication of this new standard or notice that the sole, undisputed evidence that the full costs of these projects were ISRS eligible was "based on far too few work orders for such a conclusion to be reasonable." Under such circumstances, the Company reasonably concluded its sample was sufficient.

[9]As the Western District Court of Appeals has observed, due process requires that administrative hearings be fair and consistent with rudimentary elements of fair play. ***State ex rel Fischer v. Public Service Commission***, 645 S.W.2d 39, 43 (Mo. App. W.D. 1983), citing ***Tonkin v. Jackson County Merit System Commission,*** 599 S.W.2d 25, 32–33[7] (Mo.App.1980) and ***Jones v. State Department of Public Health and Welfare,*** 354 S.W.2d 37, 39–40[2] (Mo.App.1962). One component of this due process requirement is that parties be afforded a full and fair hearing at a meaningful time and in a meaningful manner. Id., citing, ***Merry Heart Nursing and Convalescent Home, Inc. v. Dougherty,*** 131 N.J.Super. 412, 330 A.2d 370, 373–374[7] (1974). Obviously, a hearing is neither full nor fair – nor in any way meaningful – when it is never held on a critical issue.

10. For all of these reasons, the Commission should grant rehearing and permit the Company to recover the ISRS costs that were excluded in the Order. The Company provided the Commission with ample evidence for the Commission to comply with the Missouri Court of Appeals' remand instruction to assess the impact that plastic retirements had on ISRS costs. The Company's replacement programs have been carried out in a manner that reduced cost, not added to them, and has enhanced the safety of its customers and the public generally as well as the employees doing this critical work. The Company should not be penalized for all of this by having non-existent costs excluded. All of these considerations strongly suggest that the Commission should evaluate the evidentiary record anew and modify its decision to permit recovery of the ISRS costs excluded in its Order.

REQUEST FOR AUTHORIZATION TO DEFER REVENUE AMOUNTS EXCLUDED FROM ISRS RATES PENDING SATISFACTION OF NEW EVALUATION REQUIREMENTS

11. In the event the Commission does not grant rehearing or otherwise change the requirements set forth in the Order, the Company respectfully requests that it authorize the Company to defer for potential recovery in its next ISRS filing the revenues and costs excluded in these cases subject to the Company satisfying the roadmap for ISRS inclusion first articulated by the Commission in its Order.

12. The granting of such relief is both warranted by the circumstances of these cases and well within the Commission's lawful discretion to approve. In terms of the first consideration, the Company explained in detail above how it could not possibly have complied with the Commission's new standard for justifying inclusion of ISRS costs since it was not articulated by the Commission until it issued the Order after the hearing process had ended. The Company has also pointed out how it would have been impossible, in any event, to conduct the more extensive

analyses suggested by the Commission given the 5 business days allowed to perform such analyses.

13. Granting the deferral authority requested herein would largely cure these serious inequities, by providing the Company with adequate time to actually conduct such analyses and include their results in its next ISRS filing. At the same time, it would not financially penalize the Company in the interim for its understandable inability to anticipate in advance the new standard set forth in the Commission's Order. The Company would, of course, have to provide and successfully defend the analyses outlined in the Commission's Order in order to recover such amounts. But assuming it does, fairness dictates that it should be able to recover the costs that were excluded.

14. It is also clear that the Commission has abundant authority to grant such relief. The Western District Court of Appeals has repeatedly upheld the Commission's power to grant such accounting authorizations. *See* ***Office of the Public Counsel v. Pub. Serv. Comm'n,*** 301 S.W.3d 556 (Mo.App.W.D. 2009); ***Mo. Gas Energy v. Pub. Serv. Comm'n,*** 210 S.W.3d 330 (Mo.App.W.D. 2007); ***Mo. Gas Energy v. Pub. Serv. Comm'n*****,** 978 S.W.2d 434, 438 (Mo.App.W.D.1998). Moreover, before the ISRS Statute was enacted, the Commission routinely authorized the deferral of safety-related investments such as those included in the Company's ISRS filing for recovery in subsequent cases. *See e.g.* ***Re: Laclede Gas Company,*** Case No. GR-99-315, *Report and Order* issued September December 24, 1999; ***Re: Missouri Gas Energy,*** Case No. GR-98-140, *Report and Order* issued September 2, 1998.

15. The power to grant such accounting authorizations is separate and distinct from the ISRS statute. There is also nothing in the provisions of the ISRS statute to suggest that the Commission cannot independently exercise this authority in the manner it deems appropriate. For all of these reasons, the Company respectfully requests that the Commission authorize it to defer

for potential recovery in its next ISRS filing the revenues and costs excluded in these cases subject to the Company satisfying the roadmap for ISRS inclusion first articulated by the Commission in its Order.

WHEREFORE, for the foregoing reasons, Spire Missouri Inc. respectfully requests that the Commission grant rehearing of its September 20th Report and Order in these cases and upon rehearing, modify its Order to permit recovery of the ISRS revenues and costs previously excluded. In the alternative, the Company respectfully requests that the Commission authorize it to defer for potential recovery in its next ISRS filing the revenues and costs excluded in these cases subject to the Company satisfying the roadmap for ISRS inclusion first articulated by the Commission in its Order.

Respectfully submitted,

SPIRE MISSOURI INC.

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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 28th day of September 2018 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

/s/ Rick Zucker

VERIFICATION

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

C. Eric Lobser, being duly sworn, on his oath states that he is Vice-President, Regulatory and Government Affairs, of Spire Missouri Inc., that he has read the foregoing application and that the matters set forth therein are true and correct to the best of his knowledge, information and belief.

C. Eric Lobser

Subscribed and sworn to before me, a Notary Public, in the City of St. Louis, State of Missouri, this 28th day of September, 2018.

Lisa M. Reed
Notary Public, State of Missouri

My Commission expires on: November 7, 2019

LISA M. REED
Notary Public - Notary Seal
STATE OF MISSOURI
St. Charles County
My Commission Expires: Nov. 7, 2019
Commission # 11265169