BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of the Application of Spire Missouri Inc. for an Accounting Authority Order Concerning Its Commission Assessment for the 2019 Fiscal Year.	))))	File No. GU-2019-0011

SPIRE MISSOURI'S REPLY BRIEF

COMES NOW Spire Missouri Inc. ("Spire Missouri" or "Company"), and, as its *Reply Brief*, respectfully states as follows to the Missouri Public Service Commission ("Commission"):

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INTRODUCTION

Initial Briefs were filed by the Staff of the Commission (Staff), the Office of the Public Counsel (OPC), and the Midwest Energy Consumers Group (MECG). The fact that Spire Missouri does not respond to each and every statement contained in those briefs should not be taken as acquiescence as to the matters not addressed. Rather, Spire Missouri's decision simply reflects the fact that those matters were adequately addressed in its *Initial Brief*.

The briefs of the Staff, OPC and MECG generally ignore the uniqueness of the type of expense being addressed in this case – the Commission's own assessment – an item related directly and exclusively to the regulatory process and not the provision of utility service in general. For example, City Utilities of Springfield, Three Rivers Electric Cooperative, and many other entities in the state of Missouri manage to provide electric and/or gas service without incurring a Commission assessment.

The Commission has stated in the past as follows:

> Through the use of AAOs, the Commission can control the timing of the recognition of expenses and receipts, thereby balancing the interests of the ratepayers and the shareholders as best serves the public interest. This balancing of interests is fundamental to the Commission's statutory duty: "a fair administration of the act is mandatory. When we say "fair," we mean fair to the public, and fair to the investors."

(*In the Matter of the Joint Application of Missouri-American Water Company et al. for an Accounting Authority Order*, Report and Order on Remand, WO-2002-273, 2004 Mo. PSC LEXIS 1637, *39, 237 P.U.R.4th 353 (November 10, 2004))

A balancing of the interests of the ratepayers and the shareholders requires more than a statement that increases in assessments due to the regulatory process must always be borne by the

shareholders. This case provides an opportunity for the Commission to recognize that Commission assessments are unique to the regulatory process and where the result of an extraordinary event, require a unique solution in order to ensure that utilities neither profit from, nor suffer from, the imposition of such assessments.

THE SKY WILL NOT FALL IF THE REQUESTED ACCOUNTING AUTHORITY ORDER (AAO) IS GRANTED –

Both OPC and MECG predict regulatory chaos (i.e. that the sky will fall), if the Commission were to grant this application. The OPC does so by suggesting that approval "could incentivize a wave of applications seeking deferrals for numerous cost increases." (OPC Brf., p. 2) MECG goes further indicating that by "granting this Spire request, the Commission will be signaling to all Utilities in Missouri to file an AAO request anytime its expenses do not exactly match up with the ratemaking cost of service." (MECG Brf., p. 11-12)

Spire Missouri has more confidence than OPC and MECG in the Commission's ability, and the ability of others, to distinguish between the Commission's own assessment - an expense related directly and exclusively to the regulatory structure established by statute - and other types of expenses.

The Commission's own assessment is different. It is not a normal expense related to the actual provision of utility services. It is, instead, an expense related directly and exclusively to the regulatory structure established by statute; meaning that "but for" this mandated regulatory structure, there would be no assessment. It follows that the Commission assessment is not the sort of expense that a utility should profit from – or suffer a loss from.

THE EVENT, NOT UNDERLYING COSTS, MUST BE EXTRAORDINARY –

General Instruction 7 of the USOA applicable to gas corporations refers to extraordinary "items." They are defined as "items related to the effects of events and transactions which have occurred during the current period and which are of unusual and infrequent occurrence."

The use of the words unusual and extraordinary have been described by the Commission as follows:

> The USOA permits the deferral of "unusual and extraordinary" expenses. It is important to bear in mind that these words are used in an accounting sense and not in the common sense of "remarkable." The USOA defines "extraordinary items" as "those items related to the effects of events and transactions which have occurred during the current period and *which are not typical or customary business activities of the company*[.]" This definition, adopted by the Commission as part of its regulation, is controlling here. An "unusual and extraordinary" transaction is one that is not typical or customary.

(*In the Matter of the Joint Application of Missouri-American Water Company et al. for an Accounting Authority Order*, Report and Order on Remand, WO-2002-273, 2004 Mo. PSC LEXIS 1637, *42-43, 237 P.U.R.4th 353 (November 10, 2004))

Instead of focusing on the "events or transactions" that are extraordinary in this case, Staff focuses on the cost. Staff suggests that in order to grant AAO deferral treatment, "the underlying cost itself – in this case, the PSC assessment – must be unusual, unique and not recurring in order to be considered extraordinary." (Stf. Brf., p. 9) MECG similarly argues in part that "the Commission's authority to defer costs is where such ***costs*** are extraordinary ("unusual and nonrecurring, and therefore extraordinary"). (MECG Brf., p. 5) (emphasis added) This approach is both contrary to the USOA and the testimony of Staff's witness.

Similarly, Staff takes the decisions in certain recent Commission cases and, attempts to

use those to support the above-described focus on the type of cost, rather than the nature of the event. However, while each of these cases does contain language referencing whether the subject expenses (to include property taxes and transmission expenses) are ordinary and normal costs of providing service, they do not support a finding that certain types of expenses are "off limits" for purposes of AAOs.

For example, in the *Missouri-American Water Company* case,[1] the Commission contemplated that a situation where the Company had no advance notice of the Counties' action "could potentially demonstrate an unexpected event." *Missouri-American Water Company*, p. 16. However, it subsequently made factual findings suggesting that the Company "should have known about the potential increase . . . since 2007." *Id*. At p. 20. The case was not ultimately decided based on the nature of the underlying expenses (property taxes).

There are several examples of where AAOs have been granted for otherwise "ordinary and normal costs of providing service, where those expenses were caused by extraordinary events (to include government action). These include the following:

> - new gas safety rules (*In the Matter of the Application of Missouri Gas Energy*, GO-97-301(May 2, 1997));
>
> - the implementation of FAS 87 for pension expense (*In the matter of Missouri Cities Water Company*, 2 Mo.P.S.C.3d 60 (January 8, 1993));
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> - the implementation of FAS 106 (*In Re Union Electric*, 1 Mo.P.S.C.3d 328, 330 (EO-92-179) (June 12, 1992); *In Re St. Joseph Light and Power Company*, 2 Mo.P.S.C.3d 248, 270 (ER-93-41, EC-93-252) (June 25, 1993) (In referring to the Western Resources proceeding, "[t]he Commission also found that expenses related to the adoption of FAS 106 are extraordinary or unusual items which qualify for deferral and later amortization."); *In Re Missouri Gas Energy*, 3 Mo.P.S.C.3d 203 (GO-94-255) (September 28, 1994); *In Re Empire District*

[1] *In the Matter of the Application of Missouri-American Water Company for an Accounting Authority Order Related to Property Taxes in St. Louis County and Platte County*, Case No. WU-2017-0351 (December 20, 2017)

Electric Company, EO-93-35 (February 2, 1993));

- compliance with the Clean Air Act (*In the Matter of the Application of Missouri Public Service*, 1 Mo.P.S.C.3d 200, 203-204 (1991)); and,

- the emergency cold weather rule (*In the Matter of the Application of UtiliCorp United Inc.*, GA-2002-285 (January 10, 2002), *In the Matter of the Application of Missouri Gas Energy*, GA-2002-377 (June 13, 2002)).

Even property taxes, which Staff focuses on, have been the subject of AAOs in appropriate cases. Property taxes concerning natural gas held in storage in Kansas have been the subject of more than one AAO. (*See In re Missouri Gas Energy*, 2005 Mo. PSC LEXIS 1191 (GU-2005-0095, 2005) Special mechanisms have also been used to address increases in property taxes not captured within a rate case, such as the surcharge authorized in *In the Matter of Missouri-American Water Company's Tariff Sheets*, WR-2000-281, Report and Order, p. 52-53 (August 31, 2000).

The cases cited by Staff do not make the Commission assessment ineligible for AAO treatment. The bottom line is that the Commission should examine the nature of the event giving rise to the increase at issue.

Many AAO discussions utilize "acts of God" (such as a tornado), among other reasons such as governmental action, as clear examples of extraordinary situations where an AAO may be appropriate. Staff witness Oligschlaeger had an opportunity to discuss the types of costs that are commonly deferred in regard to a tornado during the hearing. Mr. Oligschlaeger pointed out that in those situations the types of costs that are deferred are expenses such as labor, overtime and contract labor. (Tr. 54-55, Oligschlaeger) These are types of costs that a utility will regularly incur, whether or not a tornado has hit. (*Id*. at 55, Oligschlaeger)

Thus, the type of cost, and whether or not a utility incurs such costs on a regular basis, has no import in regard to the "extraordinary" test.[2]

In this case, the significant increase in the Commission Assessment was the result of events that were both unusual and of infrequent occurrence. Among others, these included the fact that that the Company (a) was simultaneously litigating two rate cases for two divisions at the same time, (b) was attempting to reconcile the different rate structures, tariff language and regulatory protocols for two utilities; (c) was dealing with a wide variety of issues arising from the recent acquisition of MGE and (d) was sorting through the impacts of historic changes in federal tax laws. All of this was occurring for a company that has not traditionally litigated rate cases.

The statistics cited in OPC's opening statement (Exh. 201) showed the extraordinary nature of those cases. However, before reciting those statistics, it is helpful to remember that the Commission found that "approximately half of the issues in [the rate cases] were raised by Spire Missouri" or "about half of the contested issues at hearing." (*Amended Report and Order*, Cases Nos. GR-2017-0215 and GR-2017-0216, p. 47, 53 (March 7, 2018)) In other words, approximately half of the issues in the referenced rate cases were raised by parties other than Spire Missouri. Spire Missouri had no control over those issues or the resulting increase in the Commission assessment.

OPC pointed out the following facts concerning Cases Nos. GR-2017-0215 and GR-2017-0216:

- This was the first joint rate case filing for Spire Ease and Spire West;

[2] In fact, it would be doubtful that a person could even conceive of a new "type" of cost that a utility would incur.

- The cases were open and active all 12 months of the 2018 Fiscal Year;
- The cases contained many new and unique issues;
- 44 issues were presented to the Commission for decision (Laclede and Missouri Gas Energy cases GR-2014-0007, GR-2013-0171, GR-2010-0171, GR-2009-0355, and GR-2007-0208, all settled);
- 629 documents in EFIS (GR-2014-0007=147, GR-2013-0171=93, GR-2010-0171=189, GR-2009-0355=398, and GR-2007-0208=110);
- 11 months until a Report and Order (GR-2014-0007=7 months, GR-2013-0171=5 months, GR-2010-0171=8 months, GR-2009-0355=7 months, and GR-2007-0208=7 months); and,
- The cases were concluded with a 150-page Report and Order.

(Exh. 201)

These factors and comparisons show that Cases Nos. GR-2017-0215 and GR-2017-0216 were clearly unusual and abnormal and infrequent in occurrence. The rate cases had a significant effect on the Commission assessment (a $1.66 million dollar increase in the assessment), were significantly different from the ordinary and typical activities of Spire Missouri (as seen from a comparison to Laclede and Missouri Gas Energy cases GR-2014-0007, GR-2013-0171, GR-2010-0171, GR-2009-0355, and GR-2007-0208). They also contained features that are not reasonably expected to recur in the foreseeable future (the first rate case for each division after a major acquisition and a history showing that the Company has not traditionally litigated rate cases).

BRIEFS FURTHER SUPPORT CONCEPT THAT THE INCREASE IS ESSENTIALLY RATE CASE EXPENSE –

The parties continue to confirm that the 2019 Fiscal Year assessment increase of $1,661,778.53 above the 2018 Fiscal Year amount reflected in Spire Missouri's revenue requirement (Exh. 1, Weitzel Dir., p. 3) was a result of Spire Missouri's rate cases concluded in April of 2018.

Staff states that "the primary reason for the increase in assessment was a significant increase in natural gas case activity before the Commission, due in large part to Spire's decision to file two general rate cases." (Staf. Brf., p. 10) OPC's brief agrees that the increase in Spire Missouri's assessment was essentially rate case expense associated with the fact that the "largest and most time-consuming cases in FY 2018 were the two Spire rate cases for Spire Ease and Spire West, which contributed significantly to Spire's FY 2019 assessment." (OPC Brf., p. 4)

As described in Spire Missouri's Initial Brief, this increase, which is fundamentally another form of rate case expense, has no opportunity to be recovered by Spire Missouri in the absence of a deferral. Denying such recovery in whole is contrary to findings and conclusions made by the Commission in Spire Missouri's last rate case (Cases Nos. GR-2017-0215 and GR-2017-0216):

- ". . . rate case expense can benefit both utility shareholders and customers." (Tr. 59, Oligschlaeger; *Amended Report and Order*, Cases Nos. GR-2017-0215 and GR-2017-0216, p. 46 (March 7, 2018)); and,
- ". . . it is just and reasonable for the shareholders and the ratepayers who both benefited from the rate case, share in the rate case expense". (Tr. 59, Oligschlaeger;

Amended Report and Order, Cases Nos. GR-2017-0215 and GR-2017-0216, p. 53 (March 7, 2018))

Related to this concept is another reason that the Commission has previously described for the use of AAOs. That is, to create a situation whereby customers pay for the services they receive:

> The AAO is one of the Commission's chief regulatory tools for implementing another aspect of the Matching Principle. As discussed above, one aspect of the Matching Principle is to match revenues and expenses with the period in which they were incurred. However, under another aspect of the Matching Principle, "ratepayers are charged with the costs of producing the service they receive." The purpose is to match costs with benefits so that the ratepayers that enjoy the benefits of utility property also bear the costs thereof.

(*In the Matter of the Joint Application of Missouri-American Water Company et al. for an Accounting Authority Order*, Report and Order on Remand, WO-2002-273, 2004 Mo. PSC LEXIS 1637, *35-36, 237 P.U.R.4th 353 (November 10, 2004))

Deferral in this case would permit the sort of matching that would be consistent with the Commission's decision as to what parties should be responsible for rate case expense found in Spire Missouri's most recent rate cases.

IMPORT OF 5% ANALYSIS –

In addressing the 5% of revenue provision found in the USOA, MECG suggests that the purpose of the provision is so that "the Commission does not concern itself with trivial events that might otherwise be considered extraordinary." (MECG Brf., p. 10) Of course, the USOA actually works in exactly the opposite fashion

General Instruction 7 of the USOA states, in part, as follows:

> To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent as extraordinary.

Thus, instead of protecting the Commission from smaller items, the USOA ***requires*** the Commission's involvement for those items that are less than 5% of income. OPC witness Roth acknowledges this distinction stating that the consequence of an item that is less than 5% of income is a requirement that "Spire acquire Commission approval to defer the costs." (Exh. 200, Roth Reb., p. 6) Ms. Roth reiterated that consequence at the hearing. (Tr. 78-79, Roth)

The Commission has also been consistent with this approach as described in *In the Matter of the Application of Missouri Public Service for the issuance of an accounting authority order*, 1 Mo.P.S.C.3d 200, 206, Case No. EO-91-358, et al., (December 20, 1991), wherein the Commission stated:

> The issues of whether the event has a material or substantial effect on a utility's earnings is also important, but not a primary concern. The company, under the USOA, is required to seek Commission approval if the costs to be deferred are less than five percent of the company's income computed before the extraordinary event. This five percent standard is thus relevant to materiality and whether the event is extraordinary but is not case-dispositive.

(emphasis added)

The Commission again confirmed these thoughts in *In the Matter of the Joint Application of Missouri-American Water Company et al. for an Accounting Authority Order*, Report and Order on Remand, WO-2002-273, 2004 Mo. PSC LEXIS 1637, *58, 237 P.U.R.4th 353 (November 10, 2004):

> The Commission originally stated in the *Sibley* decision, and has restated since, that materiality is a factor for consideration, but it is not determinative. In other words, while the magnitude of the item proposed for deferral must be considered,

that factor alone does not drive the decision.

The USOA does not exclude deferral of amounts less than 5% of net income. Instead, it is for such amounts, that the USOA expressly calls for Commission assessment of the events related to extraordinary items identified by the company.

CONCLUSION

The Commission has generally been consistent with its view that it "will continue to review AAO requests on a case-by-case basis under the *Sibley* standard and will grant them or refuse to grant them according to the particular circumstances of each case." (*In the Matter of the Joint Application of Missouri-American Water Company et al. for an Accounting Authority Order*, Report and Order on Remand, WO-2002-273, 2004 Mo. PSC LEXIS 1637, *62-63, 237 P.U.R.4th 353 (November 10, 2004))

The type of expense at issue in this case (the Commission's own assessment), the significance of the variance in that amount, and the unusual and infrequent occurrence of the events leading to that variance – supports a grant of an Accounting Authority Order to Spire Missouri authorizing it to track on its books a regulatory asset (or liability), which represents the increases (or decreases) from its assessment as allowed in Cases Nos. GR-2017-0215 and GR-2017-0216, beginning with the Fiscal Year 2019 Commission assessment and continuing through subsequent years until the Company's next rate case.

WHEREFORE, Spire Missouri respectfully submits this *Reply Brief* for the Commission's consideration.

Respectfully submitted,

Dean L. Cooper MBE#36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
(573) 635-7166
dcooper@brydonlaw.com

ATTORNEYS FOR
SPIRE MISSOURI INC.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 11th day of January, 2019, to:

Jeff Keevil
General Counsel's Office
staffcounselservice@psc.mo.gov
jeff.keevil@psc.mo.gov

Marc Poston
Office of the Public Counsel
opcservice@ded.mo.gov
marc.poston@ded.mo.gov

David Woodsmall
Woodsmall Law Office
david.woodsmall@woodsmalllaw.com