

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Laclede Gas Company’s) **File No. GR-2017-0215**
Request to Its Revenues for Gas Service) Tariff No. YG-2017-0195

In the Matter of Laclede Gas Company d/b/a) **File No. GR-2017-0216**
Missouri Gas Energy’s Request to Increase) Tariff No. YG-2017-0196
Its Revenues for Gas Service)

SPIRE MISSOURI INC.’S RESPONSE
TO OPC’S AMENDED APPLICATION FOR REHEARING

COMES NOW Spire Missouri Inc. (hereinafter “Spire Missouri” or “Company”) and submits this Response to the Amended Application for Rehearing filed in these cases on March 30, 2018 by the Office of the Public Counsel (“OPC”). In support thereof, Spire Missouri states as follows:

1. On March 22, 2018, the Commission issued an Order in Case Nos. GO-2016-0332 and GO-2016-0333 directing the parties to advise the Commission on how it should proceed in light of the Western District Court of Appeals’ reversal and remand of the Commission’s Report and Order relating to the Company’s investments under the Infrastructure System Replacement Surcharge (“ISRS”) mechanism. The Order was not entered in the above-named rate cases.

2. In response, OPC nevertheless filed a pleading in these rate cases characterized as an “Amended Application for Rehearing” (“Amended Application”).¹ For the reasons given herein, the Commission should not consider the Amended Application, let alone grant it.²

3. In its Amended Application, OPC seeks to accomplish two things. First, it attempts to cure its failure to file a timely application for rehearing of the Commission’s decision in the

¹ The original Application for Rehearing was filed on March 2, 2018 by MCEG, MIEC, and the City of St. Joseph, in addition to OPC. It sought rehearing of the Commission’s February 21 Report and Order, which has since been superseded by the March 7 Amended Report and Order.

² OPC also filed a recommendation in the Company’s ISRS cases, which the Company will address separately.

March 7 Amended Report and Order (“Amended Order”). In fact, the vast majority of OPC’s Amended Application is devoted to simply restating the same arguments that had previously been restated by OPC and others in their equally insufficient “Notice on Application for Rehearing” (the “Notice”) filed on March 20, which, like this pleading, was filed after the March 17 effective date of the Commission’s March 7 Amended Order.

4. On March 28, the Company responded to the Notice, addressing why a rehearing application filed after the effective date of the Amended Order has no legal force or effect under Section 386.500.2, and why it provides no basis for challenging any aspect of the Amended Order. *See State ex rel. Office of Public Counsel v. Public Service Commission*, 236 S.W.3d 632, 636 (Mo. 2007); *State ex rel. Alton Railroad Co. v. Public Service Commission*, 155 S.W.2d 149, 154 (Mo. 1941). The Company’s March 28 response also briefly summarized why the arguments raised by OPC and others in those pleadings regarding capital structure and due process, were in any event fundamentally flawed and unpersuasive, as the Commission itself implicitly recognized by rejecting their positions in the March 7 Amended Order.

5. Nothing set forth in OPC’s Amended Application could or does do anything to cure these fundamental defects. No matter how many times OPC may change the title of its rehearing applications, they are still untimely, and only more so with the passage of time. Nor have the arguments made by OPC on this issue grown any more persuasive or compelling by virtue of simply restating them. For all of these reasons, OPC’s attempt to resurrect this issue should not be considered by the Commission, or if considered, should be denied.

6. Second, OPC attempts to seek rehearing in the rate cases based on what it claims are ISRS “over-collections.” This argument is even more flawed.³ Not only is the Amended

³ OPC’s attempt to use the finality of the Court of Appeals opinion as a pretext for submitting its unauthorized and legally defective Amended Application for Rehearing should be rejected. The fact that there was an ongoing appellate

Application untimely, but OPC seeks to have the Commission grant rehearing of an issue that was never even presented during the evidentiary hearing.⁴ The List of Issues submitted by the parties to these cases does not directly or indirectly refer to ISRS overcharges as an issue. (*See* December 1, 2017, Motion to Delay the Start of Proceedings, and Amended List of Issues, Order of Witnesses, Order of Cross-Examination and Order of Opening Statements). According to Ordered paragraph 2 (b) of the Commission’s May 24 Procedural Order in this case, the “[t]he Commission will view any issue not contained in this list of issues as uncontested and not requiring resolution by the Commission.” If OPC had wanted to preserve these so-called “ISRS overcharges” as an issue for decision in these cases (and potentially subject to an application for rehearing), it had an affirmative obligation to identify it as an issue in the List of Issues. It’s failure to do so is fatal to OPC’s attempt to raise the issue now in an untimely application for rehearing.

7. OPC’s attempt to raise the issue of ISRS overcharges in its Amended Application is also a direct violation of the December 3, 2017 Partial Stipulation and Agreement that was entered into by the Company, OPC and other parties and subsequently approved by the Commission in its Amended Order. Paragraph 9 of that Partial Stipulation and Agreement, states as follows:

“As required by Commission rules, the Company’s current ISRS shall be reset to zero upon the effective date of new rates in this proceeding. Plant in service

process does not change or excuse OPC’s decision not to pursue its overcharge issue in these cases. OPC did not identify the ISRS matter as an issue, much less attempt to quantify the ISRS charges it believes should have been disallowed. OPC can hardly claim that it was unaware of the Court of Appeals’ opinion at the time the Issues List in these cases was being prepared. The Western District’s “decision” was issued on November 21, 2017 or 10 days before the Issues List was submitted and was even attached to the surrebuttal testimony of OPC witness John Robinett filed on the same date. Given these circumstances, there is simply no justification for OPC’s failure to raise this as an issue, assuming OPC believed there was any basis for doing so.

⁴OPC’s untimely effort to interject this as an issue in these rate cases is even more inexplicable given that under Subsection 8 of Section 393.1015 of the ISRS Statute: (a) rate cases are reserved solely for the purpose of addressing whether ISRS investments were prudently incurred – an issue that was never even raised in these proceedings and (b) and that any adjustments for imprudently incurred costs would be reflected in a subsequent ISRS filing and not, as OPC proposes, in the rate case itself. Given this language, there is nothing in the ISRS Statute to support or authorize the relief being sought by OPC in its Amended Application.

additions for inclusion in a future ISRS shall be limited to additions subsequent to September 30, 2017.”

8. Notably, there is nothing in this provision to indicate or even imply that the Company’s current rate cases would be subject to a potential adjustment to exclude the so-called “overcharges” referenced by OPC in its Amended Application. Instead, consistent with OPC’s failure to identify such overcharges as an issue in the Issues List, this provision strongly indicates that current ISRS charges were to be rebased without adjustment, as no party argued that any pipeline replacement costs were imprudent. Accordingly, OPC’s attempt to propose such adjustments now in its Amended Application is clearly precluded by the agreement which it voluntarily entered into in exchange for good and sufficient consideration offered by the Company and other parties. For these same reasons, OPC’s attempt to raise this issue now is also precluded by paragraph 20 of the same Partial Stipulation and Agreement which provides that parties waive, with respect to any issue resolved by the Agreement, “. . . their respective rights to judicial review of the Commission’s Report and Order in this case pursuant to Section 386.510 (RSMo. 2000).” Contrary to the explicit waiver it freely made, OPC is now seeking to pursue judicial review in a manner that directly violates this provision. Such an effort should be rejected by the Commission.

9. OPC’s attempt to raise the issue of ISRS overcharges in its Amended Application is also inconsistent with the terms of the Stipulation and Agreement it signed in the Company’s most recent ISRS proceedings, File Nos. GO-2017-0201 and GO-2017-0202 in which the Parties agreed that any decision by the Western District Court of Appeals in the two prior ISRS cases under review by the Court would be applied to the latter cases, subject to the Parties reservation of “. . .their rights to make any argument they wish regarding the methodology, propriety, and quantification of such refund, if any. OPC’s effort to have the Commission approve a

quantification of alleged ISRS over-charges without any opportunity to challenge that quantification is an obvious abrogation of this agreed upon reservation of rights.

10. Even if the Amended Application could be entertained by the Commission despite all of these deficiencies, it should nevertheless be denied because there is simply nothing in the evidentiary record to support it. In fact, the evidentiary record clearly and unambiguously shows that the adjustments proposed by OPC are wholly unjustified. In his rebuttal testimony, Company witness Mark Lauber testified in detail why the Company incurs no additional ISRS costs as a result of the incidental replacement of plastic pipe. (*See* Exh. 49). Instead, the Company's replacement process actually saves millions of dollars in costs that would otherwise be reflected in rates (*Id.* at p. 11, line 22 to p. 12, line 2). Mr. Lauber's testimony included a specific example of how these costs savings occur and grow over time. (*Id.* at pp. 13-14; Schedule MDL-R1). Mr. Lauber's analysis also showed that Spire's approach would save over \$500,000 for one project alone versus continuing to insert plastic patches until all of the cast iron in that area was replaced. In short, the Company acted in a prudent manner in its approach to pipeline replacement.

11. Notably, OPC never submitted any testimony to dispute Mr. Lauber's analysis. As a result, the undisputed evidence on the record clearly establishes that the "overcharges" referenced by OPC in its Amended Application are phantom in nature and have no connection to the real world factors that drive the magnitude and nature of the Company's ISRS charges. In short, there is simply no basis on the evidentiary record established in these cases that would support OPC's quantification of overcharges, even if its Amended Application was something that could be validly considered by the Commission.

12. Finally, OPC violates the Company's due process rights in the very pleading in which OPC complains about alleged violations of its own due process rights. Neither in the prior

ISRS cases nor in these current rate cases, did OPC ever suggest a methodology for quantifying the value of its proposed ISRS disallowances, let alone actually quantify them. OPC did not provide such information in its testimony or prior pleadings and did not even raise ISRS overcharges as an issue. And now, after the Commission has conducted hearings, accepted briefs, closed the record, and issued the Amended Order, OPC finally submits a quantification of such alleged overcharges in a way and at a time that precludes any party from filing testimony or otherwise rebutting the propriety of what it has proposed. It is difficult to envision a more complete violation of due process, yet another reason to reject OPC's belated attempt to raise this issue.

CONCLUSION

In conclusion, for the reasons stated above, Spire Missouri Inc. respectfully requests that the Commission disregard and not consider the Amended Application for Rehearing filed by OPC in these cases on March 30, 2018 or, alternatively, deny such applications if the Commission does consider them.

Respectfully Submitted,

/s/ Rick E. Zucker

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ATTORNEYS FOR SPIRE MISSOURI INC.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the parties of record in this case on this 9th day of April, 2018 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

/s/Marcia Spangler