

**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-2019-0356**
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-2019-0357**
Replacement Surcharge in its Spire Missouri)
West Service Territory)

**CONCURRING OPINION OF COMMISSIONER DANIEL Y. HALL
IN THE REPORT AND ORDER**

I join in the Commission’s Report and Order, issued October 30, 2019, in the above-captioned case regarding the application of Spire Missouri Inc. (Spire Missouri or the Company) to modify its Infrastructure System Replacement Surcharge (ISRS). I write separately in concurrence to suggest an outline of an amendment to the ISRS statute that would provide for consistency and certainty in implementation, and promote safety through leak prevention (the public policy that underlies the ISRS statute) as well as economic efficiency.

Spire Missouri began a cast iron and steel replacement program over 25 years ago. Until 2010, this program employed a piecemeal approach to pipe replacement by replacing pipes when they were about to fail. In 2011, the Company changed to a more systematic and economic approach whereby it retires all the existing pipes in a neighborhood, including some plastic pipe that may not be worn out or deteriorated, and installs new pipe often in different locations that are more accessible and efficient to

maintain. This approach also allows the system to perform more efficiently by operating at higher pressures and enhances customer safety, convenience, and service by installing metering equipment outside the home.

Under the ISRS statute, for an infrastructure cost to be ISRS-eligible, the component replacement must be “installed to comply with state or federal safety requirements” and the replaced component must be “worn out or in a deteriorated condition.”¹ The critical issue in this case, as well as the previous three ISRS cases before the Commission, two of which are currently on appeal in the Western District, is the extent to which the cost of new plastic pipe is ISRS eligible, when it is replacing some portion of plastic pipe that may not be worn out or deteriorated. While good public policy supports Spire Missouri’s systematic replacement program (customer service, cost, efficiency, safety, reliability), the Western District has expressly ruled that costs to replace plastic that is not worn out or deteriorated, as part of a systematic redesign, are not ISRS-eligible.²

While Spire Missouri does not dispute that the cost for ineligible plastic replacement must be subtracted from the total cost of the project to determine the eligible portion, it argues that because it cost less to replace the plastic than it would have cost to re-use it, there is no incremental cost and, therefore, nothing to subtract. This approach involved Spire Missouri’s analysis of 509 ISRS projects in the prior case and twelve projects in this case, comparing the actual costs for systematic replacement (cast iron,

¹ Section 393.1009(5)(a), RSMo.

² *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 839 (Mo. Ct. App. 2017), reh'g and/or transfer denied (Dec. 14, 2017), transfer denied (Mar. 6, 2018).

steel and plastic) with estimated costs for piecemeal replacement (cast iron and steel). This accounting approach is problematic because: (1) it compares actual costs to estimated costs; (2) it is only employed for a small sampling of the projects at issue; (3) requires a significant amount of Spire Missouri accounting and engineering resources to produce; (4) requires the Staff of the Commission (Staff) and the Office of the Public Council (Public Counsel) to engage in a massive amount of auditing and analysis in an abbreviated timeframe; and (5) it does not fit neatly within the statutory language.

To address this issue in this case, the Commission employed the same methodology it employed in the prior two cases, reducing ISRS revenues by the percentage of plastic pipe replaced of the total pipe replaced. This methodology is the best evidence available to: (1) implement the express language of the ISRS statute; (2) comply with the Western District's interpretation of this statute; and (3) fulfill the purpose of the ISRS statute to promote safety by incentivizing the replacement of deteriorated cast iron and steel pipes. However, this approach is admittedly crude in that it does not account for what I believe is undisputable costs savings and efficiencies resulting from the systematic replacement approach. In addition, it assumes without empirical support an ironclad engineering and financial correlation between the length of existing plastic pipe compared to the total existing pipe to be replaced in a project, the costs to replace such ineligible pipe and the percentage of the total project costs attributable to plastic replacement.

Clearly there is a misalignment between the courts' narrow interpretation of the statute and the evolving best practices of cast iron and steel replacement. This problem is exasperated by the frequency of these ISRS proceedings, the expedited process set

by statute, the time lag between our decisions and the resolution of the subsequent appeals, and the complexity of the relevant engineering and financials. Therefore, moving forward, I believe that the most appropriate action is a statutory change to the ISRS statute to ensure efficient systematic replacement of cast iron and steel pipe through a transparent, consistent, and predictable process.

My proposal, though skeletal in nature and certainly subject to considerable improvement through discussions and negotiations by interested policymakers and stakeholders, is set forth below:

1. A gas company would be required to submit a five to ten year Infrastructure System Replacement Plan (ISRP) that includes a list of the gas distribution system infrastructure replacements to be considered for ISRS treatment, a detailed estimate of projected costs, and an explanation of how the ISRP promotes safety and reliability in a cost-effective manner.

2. After considering the ISRP application and weighing the positions of all interested parties, and based on the record presented, the Commission would approve, reject, or modify the ISRP based on a public interest standard.

3. The Commission would be required to make this determination within 150 days of the ISRP application.

4. Approval of an ISRP would constitute a determination of decisional prudence (as opposed to operational prudence).

5. Twice a year, the gas company would be authorized to file an application to modify its ISRS surcharge to account for new completed projects contained in the ISRP, were necessitated by relocations, or were incurred in connection with leak repairs.

5. The Commission would have 90 days to rule on the ISRS surcharge modification application.

6. The existing ISRS cap of 10 percent of a company's base revenue level would be unchanged.

7. A gas company would be required to file a general rate case every five years but Staff or Public Counsel could request one after three years.

Some may view this approach as an overly broad departure from the current ISRS structure and would prefer a more narrowly tailored fix of ISRS eligibility to include replacement of plastic portions incidental to a systematic replacement process. However, I believe such an approach would only result in additional disputes between the parties, and before the Commission and the courts over the meaning of "portions," "incidental" and "systematic." These decisions would have to be reconciled with prior judicial decisions employing a narrow interpretation of eligibility in the current statute. This can be avoided by allowing a company to propose (based on its operational expertise), and the Commission to approve (based on its view of the public interest), an ISRP that provides a certain but flexible category of eligible expenses.

For the foregoing reasons, I concur.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "D. Hall".

Daniel Y. Hall
Commissioner

Dated at Jefferson City, Missouri,
on this 30th day of October 2019.