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 Replacement Surcharge in its Spire Missouri East Service Territory	))))	**File No. GO-2019-0015**
In the Matter of the Application of Spire Missouri Inc. to Change its Infrastructure System Replacement Surcharge in its Spire Missouri West Service Territory	))))	**File No. GO-2019-0016**

SPIRE MISSOURI INC.'S APPLICATION FOR REHEARING

COMES NOW Spire Missouri Inc. ("Spire Missouri" or "Company"), on behalf of itself and its two operating units, Spire Missouri East ("Spire East") and Spire Missouri West ("Spire West") and, pursuant to 4 CSR 240-2.160(1) and Sections 386.500 and 386.510 RSMo., applies for rehearing of the Commission's May 3, 2019 Report and Order (the "Order"). In support thereof, Spire Missouri states as follows:

A. THE APPLICANT

1. Spire Missouri Inc. (hereinafter "Spire Missouri" or "Company") is a public utility and gas corporation incorporated under the laws of the State of Missouri, with its principal office located at 700 Market Street, St. Louis, Missouri 63101. A Certificate of Good Standing evidencing Spire Missouri's standing to do business in Missouri was submitted in Case No. GF-2013-0085 and is incorporated herein by reference. The information in such Certificate is current and correct.

2. Through its Spire East operating unit, the Company is engaged in the business of distributing and transporting natural gas to customers in the City of St. Louis and the Counties of St. Louis, St. Charles, Crawford, Jefferson, Franklin, Iron, St. Genevieve, St. Francois, Madison,

and Butler in Eastern Missouri, as a gas corporation subject to the jurisdiction of the Commission. Through its Spire West operating unit, the Company is engaged in the business of distributing and transporting gas to customers in the City of Kansas City and the Counties of Andrew, Barry, Barton, Bates, Buchanan, Carroll, Cass, Cedar, Christian, Clay, Clinton, Cooper, Dade, DeKalb, Greene, Henry, Howard, Jackson, Jasper, Johnson, Lafayette, Lawrence, McDonald, Moniteau, Newton, Pettis, Platte Ray, Saline, Stone, and Vernon Counties in Western Missouri, as a gas corporation subject to the jurisdiction of the Commission.

3. Communications in regard to this Application should be sent to the undersigned counsel.

4. Other than cases that have been docketed at the Commission, the Company has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates within three years of the date of this application.

5. The Company is current on its annual report and assessment fee obligations to the Commission; no such report or assessment fee is overdue.

B. REQUEST FOR REHEARING

6. On May 3, 2019, the Commission issued the Order in the above-captioned cases in which it rejected the tariffs originally filed by Spire Missouri in these cases and authorized the Company to file new revised tariff sheets sufficient to recover ISRS revenues in the amount of $6,425,514 for its Spire East service territory and $6,782,560 for its Spire West service territory. Consistent with the statutory deadline set forth in the ISRS Statute[1] for processing ISRS applications, the Commission made its Order effective on May 14, 2019.

[1] S*ee* Sections 393.1009-1015 RSMo.

7. At the outset, the Company would note that significant progress has been made in these cases in resolving, or establishing a path for resolving, various issues that have arisen recently in connection with the Company's ISRS filings. Most significantly, it appears that the Commission and the parties have now recognized, at least for purposes of these cases, the ISRS eligibility of those blanket work order costs that have been identified as eligible under the analyses conducted by the Company and reviewed by the Staff. The parties have, with the Commission's approval, also charted a path for addressing and hopefully resolving the appropriate treatment of income taxes and overhead costs. The Company is committed to working with the Staff and the Office of the Public Counsel to address these issues in a constructive manner and to explore additional alternatives for addressing the plastics issue that the Company believes was erroneously decided in these cases.

8. In the interim, however, the Company respectfully submits that the Commission should rehear two issues the Company believes were erroneously decided in its May 3, 2019 Report and Order. Both relate to the ISRS Statute. The first error involves the Order's misapplication of the eligibility requirement in the ISRS Statute which provides that plant being replaced must generally be in a worn-out or deteriorated condition to qualify for ISRS treatment. The Order misapplies this eligibility requirement by using it as a basis for excluding costs relating to replacement rather than reuse of plastic components even though the clear and undisputed evidence showed that such costs had already been excluded from the Company's ISRS request. The second error involves the Order's complete disregard of another eligibility requirement in the ISRS statute – namely, the provision which specifies that plant *is* eligible for ISRS inclusion as long as it was not included in the utility's rate base in its last general rate case proceeding. The Order ignores this clear eligibility requirement by excluding any consideration of ISRS eligible

costs that were incurred subsequent to the Company's last rate case because an appeal involving such costs is underway. By imposing this additional eligibility requirement, the Order fundamentally transforms the ISRS process into one in which the recovery of plainly ISRS-eligible plant can be delayed for many months and even years beyond the timeframes contemplated by the General Assembly when it enacted the Statute. Each of these errors is discussed below.

Misapplication of Worn-Out or In a Deteriorated Condition Requirement

9. The Company fully understands that the ISRS mechanism, as currently written, cannot be used to recover costs for replacing plastic components that are not in a worn out or deteriorated condition. That is precisely why the Company presented in Case Nos. GO-2018-0309 and 0310 witnesses who testified that the Company carefully planned its systematic main replacement program to be cost-efficient, and that the decision to replace plastic was made to lower ISRS costs. The Company also presented 10 engineering/cost analyses of various ISRS projects - to support its answer to the question of what costs, if any, were incurred to replace plastic facilities in connection with the Company's cast iron and bare steel replacement programs. Although no party disputed the representative nature of these studies, the Commission nevertheless determined in its September 20, 2018 Report and Order (the "2018 Order") that they were "far too few" in number to reach a conclusion regarding the cost to replace plastic in other projects. While the Company was disappointed by this determination, it was heartened by the fact that the Commission proceeded to establish in the 2018 Order an evidentiary roadmap for calculating the cost to replace plastic facilities in connection with these programs. Under that roadmap, the Company was instructed to perform such cost analyses for all of its ISRS projects if it wanted to renew its request for recovery of costs associated with projects where plastic was retired as part of the Company's cast iron and bare steel replacement programs. (See 2018 Order, pp 16-17).

10. Consistent with the guidance presented by the Commission, the Company and Staff worked together in a constructive and collaborative fashion to follow this evidentiary roadmap and, after literally hundreds of hours of intensive work, the Company submitted in these cases 509 cost/engineering analyses covering all of its ISRS projects in compliance with the roadmap. Those studies showed that for most projects, replacing rather than reusing plastic served to reduce ISRS costs and charges rather than increase them. Moreover, where the replacement rather than reuse of plastic facilities *increased* ISRS costs and charges, the Company *eliminated* from its ISRS filing any such increased costs associated with the replacement of plastic.

11. The Order in these cases essentially repudiates the guidance given by the Commission less than eight months ago and, for the first time, raises new concerns regarding the meaning and significance of the engineering/cost studies that it encouraged the Company to provide for each project in the 2018 Order. Notably, none of these concerns were mentioned by the Commission in connection with the studies submitted by the Company in the 2018 ISRS cases, even though they shared the same purpose, design, structure and results as the studies submitted in these cases.

12. The Order in these cases does not really challenge the results of these studies so much as it postulates reasons for ignoring them that are either illogical or lacking in any evidentiary support. For example, page 43 of the Order states that "Spire Missouri's cost studies *may show that it cost less* to replace the plastic components than it cost to reuse them; however, nothing in…evidence proves that plastic components being replaced were costs that could be recovered under ISRS." The fact that it cost *less* to replace rather than reuse plastic in a given project, however, proves that there are no costs being recovered in that project that can be attributed to the replacement of plastic – the very outcome that negates any need to provide evidence showing that

such replacement costs could be recovered under the ISRS. Simply put, if there were no costs being incurred to replace rather than reuse plastic components, it follows as a matter of simple logic that there were no ISRS costs to remove.

13. The Order makes other findings that are equally unresponsive to what the evidence submitted by the Company and Staff showed. The Order finds, for example, that the comparison made by the Company's cost studies was not sound and compares the wrong information. The Order never articulates, however, why that is so or why the Commission failed to articulate that concern when it told the Company to provide more of those studies less than eight months ago. In a Concurring Opinion filed on May 9, 2019, Commissioner Hall did indicate that the proper basis of comparison under the Western District's remand order would have been to "compare the cost of (A) systematic redesign (replacement of worn out or deteriorated cast iron/bare steel and the plastic) versus (C) patchwork replacement of only the worn out or deteriorated cast iron and bare steel." According to Commissioner Hall, if that comparison showed it was more expensive to re-use the plastic (A > C), then there would be no incremental cost to replace the plastic, and nothing to subtract from the total project cost." As shown by the attached except from the direct testimony filed by Mark Lauber, the Company did submit such a comparison in both its last ISRS cases and its last rate case proceedings which showed that the customer *savings* achieved from replacing plastic, when compared to the piecemeal approach, were greater by a factor of three times or more. Such a result is hardly surprising given the dozens of additional times that workers would have to be mobilized to work on facilities that could have been fixed once under the Company's systematic approach, and only reinforces the position that replacing rather reusing plastic facilities has served to reduce rather than increase the Company's ISRS costs and charges.

14. The Order also states that Spire West's costs were, on a net basis, higher as a result of replacing rather than reusing plastic. This finding has no significance, however, since it ignores the critical fact that under the approach taken by the Company (and endorsed by Staff), such excess costs were eliminated from the Company's ISRS filing. The Order's statement at page 43 that the "replace versus reuse" comparison might be misleading because some of the plastic components could not be safely reused due to the installation of a higher-pressure system is also not a meaningful observation. Because the cast iron and bare steel main had to be removed, that part of the system had to be replaced in any event and doing it by replacing rather than reusing plastic components served to reduce rather than increase the Company's ISRS costs.

15. In the end, the Order does little or nothing to discredit the cost studies that the Commission implicitly endorsed in its last ISRS order by instructing the Company to replicate such studies for each ISRS project if it wanted to renew its argument that the replacement of plastic served to reduce ISRS costs. Nor does the Report and Order do anything to rehabilitate the use of the percentage method for excluding ISRS costs – a method that every party has testified is flawed to one degree or another and one that bears absolutely *no* relationship to the actual impact of replacing plastic on ISRS costs and charges.[2] Nevertheless, the Commission has used that method to disallow and exclude "costs" for replacing plastic that are either non-existent or that have already been excluded.

16. The Company respectfully submits that adopting the abandoned percentage method is not supported by the competent and substantial evidence on the record. Nor is it consistent with the legal guidance given by the Western District Court of Appeals in its prior remand opinion

[2]The application of the percentage approach by the Order is even more problematic and unreasonable when used to disallow service transfer costs which overwhelmingly involve the reuse rather than replacement of plastic components.

since, unlike the Company's studies, it does literally nothing to identify the actual cost of replacing rather than reusing plastic. Moreover, because such action constitutes a wholly unjustified departure from the guidance given by the Commission in its last ISRS Order for determining ISRS eligibility, it is arbitrary and capricious. Finally, the process used by the Commission to effectuate its action, including the use of information supplied after the evidentiary record was closed, constitutes a direct and serious violation of the Company's due process rights in that the Company was given no opportunity to present evidence rebutting such information, no opportunity to cross-examine opposing parties or exercise the other due process rights guaranteed by law. For all of these reasons, the Commission should rehear this issue and, upon rehearing, enter a new Report and Order that recognizes that costs actually incurred to replace plastic have already been excluded, and that does not further exclude from the ISRS costs that don't exist.

Disregard of ISRS Eligibility Language Mandating Consideration of Costs Not Previously Recovered in Rate Case Proceeding

17. In sharp contrast to the Order's emphasis on excluding costs based on what the Company's believes is an erroneous application of the ISRS Statute's "worn out or in deteriorated condition" eligibility requirement, is the Order's complete disregard for the Statute's eligibility requirement found at Section 393.1009(3)(c). That provision specifically defines "eligible infrastructure system replacements" as those gas utility plant projects that "were not included in the gas corporation's rate base in its most recent general rate case."

18. It is undisputed that the older ISRS investments that the Company sought to include in its ISRS filings in these case met this eligibility requirement given that they were all made after the conclusion of the Company's last rate case. As a consequence, the Order's decision not to consider these costs on jurisdictional grounds constitutes a direct and obvious nullification of this explicit requirement. Nowhere in its Order does the Commission reconcile this explicit statutory

directive of what ISRS costs it is required to consider with its conclusion that it lacks jurisdiction to do so. Simply put, the Commission cannot lawfully pick and choose which ISRS eligibility requirements it will honor and which it will disregard, as it has done in this case.

19. This is particularly true in a case of this nature where the justification given for declining jurisdiction is so tenuous as indicated by the inherently contradictory statement made by the Commission on page 20 of its Order, where it states that:

> Even though Spire Missouri has presented new evidence with regard to the Old ISRS Request, it is still asking the Commission to rehear the evidence from the prior case and to make a new order based on those costs that the Commission has already determined to be ineligible for ISRS recovery.

20. Spire Missouri agrees that it *has* presented new evidence with regard to the Old ISRS Request and because it has done so disagrees, as a matter of simple logic, that it is asking the Commission to rehear the evidence from the prior case. A rehearing request on the old case would be based only on the evidence presented in that case. Spire Missouri is asking the Commission to look at the new evidence presented in this case and make a **new** order in a **new** case based on that **new** evidence, which new order would be effective at a **new** date much later than the effective date of the old case.

21. The jurisdiction issue was clarified by the Western District Court of Appeal in ***Matter of the Determination of Carrying Costs for the Phase–In Tariffs of KCP&L Greater Missouri Operations Company, AG Processing Inc. v. Missouri Public Service Commission***, 408 S.W.3d 175 (Mo.App.W.D. 2013). The Court stated the following at page 185 regarding the ***Mo. Cable*** case relied on by the Commission:

> …once a writ of review is filed from an order of the PSC, "exclusive jurisdiction vest[s] in the circuit court where the appeal [is] filed; leaving the PSC without jurisdiction ***to alter or modify its order***." Mo. Cable Telecomms. Ass'n, 929 S.W.2d at 772 (emphasis in original). The orders entered by the PSC in the Carrying Costs Case do not alter or modify the orders under review in the Rate Change Case; rather,

> they merely implement the orders in the Rate Change Case that approved a phase-in of $7 million of the approved increase and authorized carrying costs.

22. Substituting the 2019 and 2018 ISRS cases for the Carrying Cost and Rate Change cases show that the present scenario fits the KCP&L case like a glove. In the 2019 ISRS case, Spire Missouri is not asking the PSC to alter or modify its order under review in the 2018 ISRS case; rather, it is merely asking the Commission to ***implement*** the order in the 2018 ISRS case that approved an approach to present analyses for each project to show the cost of replacing plastic. As Spire Missouri argued in its post-hearing brief, Staff Counsel succinctly summarized the legal principle:

> So in a rate case, you're being asked to set new prospective rates, rates that are going to apply in the future. So the fact that the last rate case is on appeal doesn't stop you from deciding what the future rate's going to be for a new period.[3]

23. Simply substitute "ISRS case" for "rate case", and Staff Counsel provides a clear and convincing explanation for why the Commission has the jurisdiction to consider the investments not recovered in the Company's prior ISRS cases and to include them in prospective ISRS charges:

> So in an ISRS case ~~a rate case~~, you're being asked to set new prospective rates, rates that are going to apply in the future. So the fact that the last ~~rate case~~ ISRS case is on appeal doesn't stop you from deciding what the future rate's going to be for a new period.

24. While these considerations alone would fully justify the Commission asserting jurisdiction and considering the older ISRS investments included in the Company's filing, the fact there is an explicit statutory directive telling the Commission to consider such costs eliminates any uncertainty on the matter. It is important to keep in mind that it is the General Assembly, through statute, that establishes the general parameters governing how courts are to review administrative

[3]Tr. p. 48, lines 21-25.

decisions.[4] The General Assembly has explicitly told the Commission that it is to consider the older ISRS investments that were included in the Company's filing and neither the Commission nor the courts can overrule that statutory directive.

25. Finally, in light of these considerations, the Company would respectfully request that the Commission reconsider its decision on this issue. In effect, the Commission is voluntarily surrendering a key component of its regulatory powers without any directive by the courts to do so. In the future, it is the courts and the parties that appear before the Commission that will determine what and when the Commission can exercise its ratemaking powers to consider key ratemaking issues. If a party wants to delay or prevent the Commission from considering a cost or revenue issue based on new evidence all it needs to do is file an appeal and drag it out as long as possible. Conversely, if a party wants to appeal a Commission decision it must now consider how long such appeal may prevent the Commission from looking at an issue again – a chilling circumstance that is a direct affront to the right to seek judicial review.

26. Such a result is particularly inappropriate in the context of adjustment mechanisms like the ISRS. Take the blanket work order costs that were at issue in this proceeding and the Company's last ISRS proceeding. All of the parties accepted the ISRS eligibility of such costs, at least for purposes of these proceedings. Because of the PSC's jurisdictional decision, however, the Company was denied any opportunity to include the blanket work order costs from the previous ISRS cases in its ISRS charges in these cases. The Company may also be precluded from recovering these historical blanket work order cost in its next ISRS filing depending on whether it or OPC decide to seek transfer of whatever opinion may be issued by the Court of Appeals in their current ISRS appeal and whether that request is granted. In the end, this means that the Company

[4] *See e.g.* Sections 386.500 to 386-540 RSMo.; Sections 536.130 to 536.160 RSMo.

may go another year or more before it can even try to include these costs in its ISRS charges, no matter how compelling the evidence may be of their ISRS eligibility. The Company submits that this kind of delayed recovery is wholly inconsistent with the periodic and timely adjustment contemplated by the ISRS Statute.

27. To summarize, in an appeal, the courts control the present, while the Commission controls the future. The mootness doctrine stands for the proposition that when the Commission's future decision makes the present case moot, it is the courts that step aside. In this case, the future decision does not make the present case moot. If the Commission were to approve the 2018 costs based on the new evidence presented in this case, that would control the rates charged by the Company beginning May 14, 2019 (the future). The Company would still be aggrieved by not collecting its ISRS charges between October 8, 2018 and May 14, 2019 (the present). The Court would therefore still have to decide whether the decision made by the Commission in September 2018, based on the record evidence before it, was lawful and reasonable. If not, then the Company would be entitled to recover lost revenues for that seven-month period. For all of these reasons, the Commission should reconsider this issue and upon reconsideration determine that it had jurisdiction to consider and approve for recovery these older ISRS investments.

WHEREFORE, for all the foregoing reasons, Spire Missouri respectfully requests that Commission grant this Application for Rehearing on the issues identified herein and, upon rehearing, issue an Order consistent with the recommendations set forth herein.

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 13th day of May, 2019 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

/s/ Rick Zucker

Exh. No. 4

Exhibit No:	
Issue:	**Effect of Plastic Pipe Retirements on ISRS costs**
Witness:	**Mark D. Lauber**
Type of Exhibit:	**Direct Testimony**
Sponsoring Party:	**Spire Missouri Inc.**
Case Nos.:	**GO-2016-0332, GO-2016-0333, GO-2017-0201, GO-2017-0202, GO-2018-0309, GO-2018-0310**
Date Prepared:	**August 22, 2018**

SPIRE MISSOURI INC.

**File Nos. GO-2016-0332, GO-2016-0333,
GO-2017-0201, GO-2017-0202,
GO-2018-0309, GO-2018-0310**

DIRECT TESTIMONY

OF

MARK D. LAUBER

August 2018

TABLE OF CONTENTS

MDL-D1

Schedule MDL-D1

File Nos.

GO-2015-0333

GO-2016-0332

GO-2017-0201

GO-2017-0202

GO-2018-0309

GO-2018-0310

August 2018

Exhibit No:	
Issue:	**Hydrostatic Testing; Replacements of Cast Iron and Bare Steel with Incidental Plastic Pipe**
Witness:	**Mark D. Lauber**
Type of Exhibit:	**Rebuttal Testimony**
Sponsoring Party:	**Laclede Gas Company (LAC)** **Missouri Gas Energy (MGE)**
Case Nos.:	**GR-2017-0215** **GR-2017-0216**
Date Prepared:	**October 17, 2017**

LACLEDE GAS COMPANY
MISSOURI GAS ENERGY

GR-2017-0215
GR-2017-0216

REBUTTAL TESTIMONY

OF

MARK D. LAUBER

October 2017

to my Rebuttal Testimony is an engineering analysis that was performed on an actual cast iron replacement project in which 2549 feet of main was replaced, consisting of 2330 feet of cast iron main and two small patches of plastic pipe totaling 219 feet. This project is representative of what the Company typically encounters when it replaces cast iron main as part of its replacement program. Using our standard analytical tools for estimating construction costs, the engineering analysis estimated the cost to install one continuous plastic main to bypass the cast iron facilities and plastic pipe versus replacing only cast iron facilities and tying the new pipe into the older plastic patches.

Q. WHAT WERE THE RESULTS OF THIS ANALYSIS?

A. It was about 20% more expensive to use the plastic patches rather than bypassing them. The extra cost arises from extra tie-in holes and fittings that are needed to incorporate the plastic patches into the new main. In summary, there is no cost, but rather a cost savings associated with replacing the older plastic piping.

Q. DID THE COMPANY ANALYZE A DIFFERENT WAY TO REPLACE THE CAST IRON MAIN?

A. Yes. Prior to 2011, the Company was not strategically replacing entire neighborhoods of cast iron, but rather patching areas of cast iron that were leaking and needed attention. This is how the two plastic patches became interspersed in this cast iron main. The Company looked at the cost to perform the two patches and found the cost to be about $76,400 to install 219 feet of plastic main. If the Company continued with a piecemeal approach at this pace, it would take 23 excavations in this neighborhood to ultimately complete the replacement of the entire 2,549 feet of main at a total cost of just under $900,000, versus the $285,600 to bypass the entire main in one job.