BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory	))))	**File No. GO-2016-0333**
In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory	))))	**File No. GO-2016-0332**
In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory	))))	**File No. GO-2017-0201**
In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory	))))	**File No. GO-2017-0202**

SPIRE MISSOURI'S REPLY BRIEF ON REMAND

COME 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 and Spire Missouri West (f/k/a Missouri Gas Energy), and submits the following Reply Brief on Remand.

I. INTRODUCTION

On or about June 29, 2018, the Office of the Public Counsel ("OPC") filed its initial brief on remand in these proceedings in which it recommended a disallowance of ISRS charges previously collected by the Company in these ISRS cases. On that same date, the Staff of the Missouri Public Service Commission submitted a Report in which it also recommended a disallowance of these prior ISRS charges. In their filings, both OPC and the Staff base their

proposed disallowances on a methodology that is nowhere to be found in the evidentiary record of these cases. Specifically, both propose to adjust the Company's ISRS charges based on a method that uses a simple ratio of the amount of plastic replaced versus the total amount of pipe replaced.[1]

The Company submits that the new method advocated by OPC and Staff for adjusting the Company's ISRS charges should be rejected and disregarded by the Commission. As explained in the *Motion to Strike Extra-Record Evidence Submitted by OPC and Staff* filed by the Company on July 23, 2018, the introduction of this new method for adjusting ISRS charges is contrary to the agreement of the Parties on how this remand proceeding should be conducted. Moreover, any reliance on such a method to disallow ISRS costs would constitute an egregious violation of the Company's due process rights as well as the Commission's own procedural rules.

Since it does not know at this time how the Commission will rule on its Motion, however, the Company will address the merits of OPC's and Staff's post-hearing submissions in this reply brief. As discussed below, neither OPC nor Staff submitted anything in their Initial Brief or Report, respectively, that meaningfully rebuts the only competent and substantial evidence on the record to address how the incidental replacement of plastic pipe has impacted the amount of the Company's ISRS charges. That evidence, as presented by Company witnesses Mark Lauber and Glenn Buck, clearly shows that the incidental replacement of plastic pipe has not resulted in any incremental increase in the Company's ISRS charges. Instead it has affirmatively reduced those charges compared to what would have been incurred had the Company simply followed an approach that relied on reusing plastic pipe rather than replacing it, regardless of cost and safety considerations.

[1]*See* OPC Initial Brief, pp. 6-8 and supporting affidavit of John Robinett; Staff Report, pp. 7-8, as amended by its subsequent Notice.

OPC and Staff make no effort in their post-hearing submissions to question either the practical realities that drove the assessment reached by the Company's witnesses or to deal with the economic, policy and ratemaking issues raised by the fact that the replacement of plastic pipe is actually saving utility customers money rather than increasing their cost of service. The failure on the part of the Staff to offer anything of substance to dispute the Company's assessment in this regard is understandable since the Staff's witnesses who filed testimony on this issue generally *supported* the Company's position. OPC opposed the Company at the hearing, however, so its inability to cite any evidence that would dispute the Company's evaluation of the actual cost impact of replacing plastic is decisive. OPC has had multiple opportunities both in these ISRS cases and in the Company's recently concluded rate cases to challenge the Company's conclusions in this regard and has not done so. Given these repeated failures, it can only be assumed that OPC has not rebutted the Company's position - that its ISRS charges have been reduced rather than increased as a result of the incidental replacement of pipe - because it is factually impossible to dispute.

Despite the undisputed evidence to the contrary, OPC and Staff have theorized that the Company's ISRS charges were somehow increased as a result of the incidental replacement of plastic pipe. However, they have utterly failed to support their theory for quantifying such an impact. Nowhere do they explain or otherwise attempt to justify how or why using a simple percentage of plastic pipe replaced reasonably or accurately reflects the cost impact of the incidental replacement of plastic pipe.

In fact, the method advocated by OPC and Staff merely assumes that there is a direct correlation between the amount of costs that are ineligible for inclusion in the ISRS and the amount of plastic replaced. Again, there is absolutely no evidence in the record to support such

a conclusion. To the contrary, the witness for OPC as well as the two witnesses for Staff who addressed the issue all voiced significant concerns regarding the propriety of using of a simple, percentage-based method to adjust ISRS charges. When combined with the testimony provided by the Company's witnesses, this means that there was a unanimous consensus among the experts who testified in these cases that the method now being endorsed by OPC and Staff to adjust ISRS charges cannot be reasonably and reliably used for that purpose.

Moreover, there are a number of other factors that further undermine the reasonableness, accuracy and reliability of the method being advocated by OPC and Staff. As discussed below and in the Company's Initial Brief on remand, these include, among others, the fact that a significant portion of the replaced plastic facilities for which costs have been disallowed: (a) represent relatively small portions of replaced mains that even under the analysis set forth in the Court's Opinion would qualify for ISRS inclusion; (b) consist of unavoidable transfer costs that must be incurred to hook up a service line to a new main regardless of whether the service line is being reused or replaced; (c) are service lines that needed to be replaced because they were not even long enough to be attached to a new main; and (d) are service lines that were in a "worn out or deteriorated condition" and thus eligible for ISRS recovery based on a comparison of their age to their expected useful life.

The unexplained and unsupported assumption underlying the method proposed by OPC and Staff simply ignores each and every one of these factors. Given these obvious and pervasive deficiencies, the method advocated by OPC and Staff for adjusting the Company's ISRS charges does not come anywhere close to providing a reliable, fair or accurate way for making such an adjustment. For all of these reasons, the Company continues to submit that there is no

evidentiary basis upon which the Commission could disallow or adjust any of the ISRS charges at issue in these proceedings.

II. ARGUMENT

A. Nothing in the post-hearing submissions of OPC and Staff meaningfully disputes or otherwise disproves the Company's contention that the ISRS charges at issue in these proceedings was not increased a result of the Company's incidental replacement of plastic pipe.

As discussed in the Company's Initial Brief on remand, the only competent and substantial evidence on the record to address how the incidental replacement of plastic pipe affected the Company's ISRS charges – namely the testimony of Company witnesses Mark Lauber and Glenn Buck – established that such activities did not result in any incremental increase in the Company's ISRS charges, but instead saved customers money. (Company Ex 3, pp. 10-11; Company Ex. 2, p.11). Notably, there is nothing in the post-hearing submissions of OPC and Staff that in any way disproves these facts.

For example, there is nothing in the Initial Brief of OPC or Staff that takes issue with Mr. Lauber's discussion of the physical realities governing the replacement of mains and services under the Company's cast iron replacement program. (Company Ex 3, p. 10). Nor is there anything in these submissions that address or attempt to disprove Mr. Lauber's conclusion that such physical realities would make it significantly more expensive for the Company and its customers to reuse rather than replace certain plastic facilities. (*Id.*). Similarly, neither OPC nor Staff take issue with Mr. Buck's testimony that as a result of these physical realities, the cost to uncover, reconnect, rebury and, repave the interspersed plastic would be much greater than abandoning it in place, thereby putting upward pressure on ISRS rates. (Company Ex. 2, p. 11).

Instead, OPC and Staff simply propose to disallow ISRS charges based on a simple ratio of how much plastic versus non-plastic pipe was retired without any regard for how the

incidental replacement of plastic pipe actually affected ISRS costs. OPC and Staff failed to grapple with this core issue in any meaningful way, or provide any information that would contradict the competent and substantial evidence on the record, evidence which conclusively showed that the incidental replacement of plastic did not result in any incremental increase in the Company's ISRS costs or charges.

Staff did, in fact, grapple with this issue during the actual ISRS cases. The Staff witness who filed testimony on this issue generally ***supported*** the Company's position. (*See* the rebuttal testimony of Kimberly K, Bolin, Staff Exhibit 5). Ms. Bolin testified that the "Staff position is that the costs associated with replacement of the plastic main and service lines incurred by Laclede and MGE within this ISRS period are appropriately included for recovery in ISRS" (Staff Ex. 5, p. 2, line 23 to p. 3, line 2). She then goes on to explain why the approach taken by the Company was cost efficient and reasonable and why OPC's proposal to exclude costs because some plastic was also replaced was unworkable, inappropriate and counterproductive. (*See* Staff Ex. 5, pp. 2-9).

Obviously, Staff is not now in a position to cite evidence disputing the Company's testimony since Staff's own testimony affirmatively endorsed the Company's position. That core fact completely undermines Staff's current proposal to adjust ISRS charges based on a new method, and at the same time explains why Staff is unable to cite evidence disputing the Company position on this issue.

OPC has, from the outset of these ISRS cases, consistently taken issue with the Company's position. OPC's inability to cite any evidence that would dispute the Company's evaluation of the actual cost impact of replacing plastic should therefore be conclusive in the Company's favor. OPC has had multiple opportunities both in these ISRS cases and in the

Company's recently concluded rate cases to challenge the Company's conclusions in this regard and has not done so. Specifically, OPC filed no rebuttal testimony at all in these ISRS cases, even though it had an opportunity to do so. Moreover, OPC did not file any surrebuttal testimony when the Company presented rebuttal testimony in its most recent rate case proceedings, detailing and explaining in even greater detail why the incidental replacement of plastic pipe actually reduces rather than increases the level of ISRS charges.[2]

Given these repeated failures, it can only be assumed that OPC has not rebutted the Company's position that its ISRS charges have been reduced rather than increased as a result of the incidental replacement of pipe, because it is factually impossible to dispute. As discussed below, the extreme paucity of any evidence to rebut the Company's contention in this matter is matched only by the equally insufficient evidence to support the method that OPC and now Staff are advocating to adjust the Company's ISRS charges.

B. Neither OPC nor Staff has offered a reasonable or accurate method for quantifying the impact of the incidental replacement of plastic pipe.

Despite the overwhelming evidence to the contrary, OPC and Staff have theorized that the Company's ISRS charges were somehow increased as a result of the incidental replacement of plastic pipe. However, they have utterly failed to support their theory for quantifying such an impact. Nowhere do they explain or otherwise attempt to justify how or why using a simple

[2]As discussed in the Company's Initial Brief on remand, Company witness Lauber submitted rebuttal testimony in Case Nos GR-2017-0215 and GR-2017- 0216, in which he providing additional evidence regarding the impact on ISRS costs result from the incidental replacement of plastic pipe, including an analysis of the specific costs savings achieved for customers on actual projects as a result of following the Company's approach. (Exhibit 49). Given the Parties' agreement not to introduce new evidence in these ISRS cases, the Company will not address the details of that analysis. It is appropriate to note, however, that this is yet another instance where OPC (and other parties) had an opportunity to present evidence challenging the Company's sworn testimony and analysis in this regard and did not do so.

percentage of plastic pipe replaced versus other pipe reasonably or accurately reflects the cost impact of the incidental replacement of plastic pipe.

Despite Staff's and OPC's efforts to imply in their post-hearing submission that there may, in fact, be some evidentiary support for their method, a review of their actual citations to the evidentiary record clearly shows otherwise. The best that Staff can do in this regard is to reference a statement by Company counsel that the amount of plastic replaced could be identified, and to mischaracterize answers provided by Company witness Buck during cross-examination as standing for the proposition that "it would be possible to determine the ineligible amount of plastic by using a simple average." (Staff Report, p. 7).

The first reference is meaningless as the Company has never denied that the amount of plastic pipe replaced can be identified, but has instead maintained, without dispute by any other party, that such incidental replacement has not resulted in an increase in its ISRS charges. In short, this reference is a complete red-herring. The second reference is highly misleading in that Mr. Buck maintained throughout his cross examination (as later did the witnesses for Staff and OPC) that using a simple percentage of how much plastic pipe was replaced to adjust ISRS charges would *not* be appropriate. To the contrary, when asked about the propriety of such a method, Mr. Buck testified that: "I don't think that would really be accurate" (Tr. 100, lines 14-15); that "I don't think that's how you could do that" (Tr. 101, lines 22-23); that "I don't think that's a logical way to look at it, no." (Tr. 102, lines 4-5); and that "I wouldn't agree with it . . ." (Tr. 102, lines 12-13). It is simply inexplicable how the Staff could possibly cite Mr. Buck's testimony as being supportive of the method it is now proposing.

For its part, OPC cites even less to the record in support of such a method, relying instead on various percentages of replaced plastic pipe that were mentioned in the Court of Appeals

opinion or identified in Staff workpapers (OPC Initial Brief, p. 6). None of these citations, however, in any way support a method that merely assumes that such percentages should be used to adjust ISRS charges in a proportional manner. In fact, throughout their Initial Brief, OPC continually references *footage* instead of *dollars* and never addresses how they believe that one causes the other. Nor do they in any way rebut the undisputed evidence by Company witnesses Lauber and Buck that the use of such a method is not appropriate.

Perhaps the most significant disconnect between the evidentiary record and the method being proposed by Staff and OPC, however, is the fact that even Staff's and OPC's own witnesses expressed significant concerns regarding the propriety of relying on a simple, percentage-based method for adjusting ISRS charges.

While both OPC and Staff have now settled on the use of a simple ratio reflecting the percentage of plastic pipe replaced versus all pipe replaced to adjust the Company's ISRS charges, it is noteworthy that the supposed merits of such a method completely eluded them during the evidentiary hearings in these cases. In his direct testimony, OPC witness Hyneman did assert that "[t]here are very simple methods that could be used to separate the eligible ISRS costs from the ineligible ISRS costs." (OPC Ex. 1, p. 10, lines 5-6). Nowhere in his written testimony, however, did Mr. Hyneman actually propose such a method, simple or otherwise. (Staff Ex. 5, p. 6, lines 16 to 18).

As discussed in the Company's Initial Brief, Mr. Hyneman was also unable to articulate such a method throughout the evidentiary hearing held in these cases. As his discussion with Chairman Hall during the evidentiary hearing demonstrated, Mr. Hyneman could never articulate a definitive method that could be reliably and fairly used to adjust ISRS charges even when pressed. (Tr. 229, line 24 to Tr. 232, line 19). In fact, during his discussion with Chairman

Hall, Mr. Hyneman specifically acknowledged that adjusting ISRS charges through the use of a simple percentage of how much plastic was replaced versus other pipe would not necessarily be appropriate, especially where the length of facilities being installed is less than the length of facilities being replaced. (*Id*).

Both of the witnesses for Staff also expressed significant concerns during the evidentiary hearing regarding the reasonableness and propriety of using this kind of percentage-based method for adjusting ISRS charges. Staff summarized its objection to such an approach in its Brief filed on January 6, 2017, stating as follows:

> However, Staff witness Bolin testified that the use of percentages would not be appropriate. [Tr. 172-173]. She pointed out that OPC raised this issue and that Staff has not developed a methodology for it. [Tr. 175]. Neither has OPC, who has been unable to even state a specific adjustment amount. Staff witness Oligschlaeger also testified that OPC's percentage method was inadequate. [Tr. 179, 197-198].[3]

(Staff Brief, p. 24). Incredibly, both OPC and Staff are now recommending the exact same method for adjusting ISRS charges that each of their respective witnesses testified during the evidentiary hearing would *not* be appropriate. Obviously, there cannot possibly be competent and substantial evidence to support the new method proposed by OPC and Staff in their post-hearing submission when the Company, Staff and OPC have all previously testified that such a method cannot be relied upon.

That such a method has not been previously proposed by OPC, or Staff for that matter, may lie in the fact that it is simply not possible under any circumstances to actually show, as

[3] For her part, Staff witness Bolin testified that she did not know whether using percentages "would be the best possible way to do this..." or "…would get you to the exact cost of the plastic that's being replaced..." (Tr. 172, lines 15-18). Mr. Oligschlaeger testified that "there's some complications involving the facts present here that might make that [the use of a simple percentage] somewhat suspect." (Tr. 179, lines 6-8).

they have erroneously assumed, that there is a direct correlation between the amount of costs that are ineligible for inclusion in the ISRS versus the amount of plastic replaced. Certainly, such a conclusion is supported by Mr. Hyneman's responses to Chairman Hall and by the testimony and answers provided by Staff witnesses Bolin and Oligschlaeger.

Moreover, as explained in the Company's Initial Brief, there are a number of clear and obvious factors that disprove such a correlation and render the method advocated by OPC and Staff completely unreliable. First, such a method simply ignores the fact that in many instances the amount of cast iron replaced, by itself, exceeded the amount of new plastic main installed. – In response to questions from Chairman Hall, even Mr. Hyneman had to acknowledge that this circumstance makes it problematic to adjust ISRS charges based on a simple percentage of the plastic being replaced. (Tr. 231, line 16, to 232, line 19). Mr. Hyneman suggested that some allocation formula could potentially be used to allocate costs under these circumstances, but again failed to specify what that allocation formula might be, much less why it might be justified. (*Id.*) Nor did Mr. Hyneman attempt to explain why under traditional cost causation principles it would make sense to allocate any ISRS costs to an activity that avoided costs rather than caused them.

Second, the method proposed by Staff and OPC is premised on adjusting ISRS charges whenever any plastic was replaced (except for mandated public improvement projects). This simply ignores the fact that a significant portion of their disallowance is for plastic facilities that comprised a relatively small portion of the facilities being replaced.[4] Even the Court of Appeals in its Opinion acknowledged that relatively modest replacements of plastic pipe would qualify

[4] As stated in Spire Missouri's Initial Brief on remand, plastic made up approximately 5% of the main facilities replaced by Spire West and 9% of the main facilities replaced by Spire East. Both amounts are a very modest portion of the overall facilities replaced.

for ISRS inclusion as an incidental replacement. As the Court stated in footnote 5, on page 6 of its Opinion:

> We recognize that the replacement of worn out or deteriorated components will, at times, necessarily impact and require the replacement of nearby components that are not in a similar condition. Our conclusion here should not be construed to be a bar to ISRS eligibility for such replacement work that is truly incidental and specifically required to complete replacement of the worn out or deteriorated components.

The problem with the method proposed by OPC and Staff is that it construes the Court's Opinion in the exact manner that the Court said it should not be construed. Specifically, simply identifying the percentage of plastic replaced and then applying it, without adjustment, to disallow an equivalent proportion of ISRS charges, results in a disallowance of all plastic replacements regardless of how modest, necessary or incidental those replacements may have been in the context of a specific project. While the Company believes the evidence supports a conclusion that all of its replacement costs were eligible for ISRS inclusion under this kind of criteria, there is no basis in the record for assuming, as OPC and Staff have, that *none* of the plastic replaced was eligible for inclusion under such criteria.

Third, the method proposed by OPC and Staff makes no allowance for the fact that a cost to transfer service lines from the old main to the new main is unavoidable regardless of whether the service line is being reused or replaced. These are costs that simply must be incurred under nearly all circumstances in order to be able to restore service to the customers served by the new main, and as a consequence, there is simply no basis for ignoring these associated ISRS charges. (Tr. 141, lines 12-14) As Ms. Bolin noted in her testimony, the Company will only replace rather than reuse a service line when there is a safety or operational reason to do so. (Staff Ex. 5, p. 8, lines 3-9). Regardless of whether it replaces or reuses a service line, however, that line must be connected to the main and the costs for doing so are both unavoidable and ISRS-eligible.

Fourth, the method proposed by OPC and Staff does not take into account that many plastic service lines need to be replaced because they are not long enough or configured in such a manner as to connect the customer's home to a new main. Once again, these are unavoidable costs that must be incurred for the Company to be able to provide service and there is accordingly no basis for disallowing them. (Tr. 141-42)

Fifth, the method proposed by OPC and Staff ignores that a substantial amount of the plastic service lines replaced by the Company were themselves in a "worn out or deteriorated condition" and thus eligible for ISRS recovery based on a comparison of their age to their expected useful life and other criteria. In other words, many of these services had been in the ground for nearly 40 years and according to depreciation professionals who have repeatedly estimated over the years how long these facilities can be expected to last, they were near, at or beyond their useful service lives. Once again, the useful service life of these facilities was a seemingly relevant factor mentioned by the Court of Appeals in discussing whether certain facilities might meet the worn out or in deteriorated condition requirement of the ISRS statute. (*See* Opinion, p. 5, footnote 3). The fact that some of these plastic service lines were at, or passed, their useful service lives was also a factor noted by Staff witness Bolin in criticizing OPC's proposal to simply exclude all plastic on the assumption that it is not in a deteriorated or worn out condition. (Staff Ex. 5, p. 4, line 25 to p. 5, line 4). As Ms. Bolin testified, her "review of these work orders indicated that Laclede has removed plastic service lines that were older than the depreciable life assigned to plastic service lines . . ." (*Id.*). A more comprehensive review of the work orders demonstrates that nearly a third of all the service lines replaced meet the criteria for assessing whether a facility is worn out or in a deteriorated condition, and yet all of the plastic facilities replaced have been used to form the basis of OPC's and Staff's proposed disallowance.

In short, the unexplained and unsupported assumption underlying the method proposed by OPC and Staff inexplicably ignores each and every one of these factors. Given these fundamental deficiencies, the method advocated by Staff and OPC for adjusting the Company's ISRS charges does not even approach the threshold necessary to provide a reliable, fair or accurate way for making such an adjustment. For all of these reasons, the Company continues to submit that there is no evidentiary basis upon which the Commission could disallow or adjust any of the ISRS charges at issue in these proceedings. Therefore, the Commission should find that the evidentiary record mandates a zero cost adjustment related to the remand.

As previously noted, a Commission Order is reasonable where "the order is supported by competent evidence on the whole record; the decision is not arbitrary or capricious [;] or where the [PSC] has not abused its discretion.'" ***State ex rel. Praxair, Inc. v. Missouri Pub. Serv. Comm'n***, 344 S.W.3d 178, 184 (Mo. banc 2011) (**quoting** ***Envtl. Utils., LLC v. Pub. Serv. Comm'n***, 219 S.W.3d 256, 265 (Mo. App. 2007)). In this instance, an Order rejecting any disallowance or adjustment to the Company's ISRS charges would be the only kind of order that satisfies these fundamental requirements.

III. CONCLUSION

In conclusion, the Company reiterates that the evidence on the record supports its assertion that the Company's plan to replace cast iron did not increase costs but decreased them. Conversely, there is no evidentiary basis on the record to support any disallowance or adjustment to the ISRS charges at issue in these proceedings. As a result, it would be a gross violation of the Company's due process rights to approve a disallowance based on factual assertions made for the first time in the post-hearing pleadings of the parties. The Commission should accordingly find that no such disallowance or adjustment is appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the General Counsel of the Staff of the Missouri Public Service Commission, and the Office of the Public Counsel, on this 27th day of July 2018 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

/s/ Marcia Spangler