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**
In the Matter of the Application of Spire Missouri Inc. to Establish an Infrastructure System Replacement Surcharge in its Spire Missouri East Service Territory	))))	**File No. GO-2018-0309**
In the Matter of the Application of Spire Missouri Inc. to Establish an Infrastructure System Replacement Surcharge in its Spire Missouri West Service Territory	))))	**File No. GO-2018-0310**

BRIEF OF SPIRE MISSOURI INC.

September 6, 2018

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BRIEF OF SPIRE MISSOURI INC.

COMES 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, pursuant to the Commission's procedural orders in these proceedings, submits its Brief addressing the various issues identified in the Parties' List of Issues filed on August 23, 2018. Except for combining issues a. and c. under

Remanded Matters, the Company will address such issues in the same order as they appear in the List of Issues. In addition, this Brief will address the questions raised by Chairman Hall and Commissioner Kenney during the evidentiary hearing regarding the relevance of certain recent judicial decisions.

A. EXECUTIVE SUMMARY

The Western District Court of Appeals (the "Court") issued an Opinion on November 21, 2017 (the "Opinion") reversing the Commission's Order (the "Order") in Case Nos. GO-2016-0332 and GO-2016-0333 (the "Cases"), to the extent that the Commission allowed ISRS charges to recover any cost for plastic components that were not in a worn out or deteriorated condition. The Court recognized that replacement of worn out or deteriorated facilities will at times require the replacement of nearby components that are not worn out or deteriorated.[1] The Court also recognized that some plastic facilities may themselves be worn out or deteriorated.[2] Accordingly, the Court made no finding as to the cost to replace plastic facilities that were not worn out or in a deteriorated condition, but instead remanded the Cases to the Commission to determine the extent of those costs.

Although the evidence in the Cases demonstrated that the replacement of plastic facilities did not increase costs, but actually enabled the Company to reduce costs, the Order did not address that evidence. Accordingly, the Court had no reason to believe that the Commission relied upon it in approving the Company's ISRS rates. Consequently, the Court did not mention these cost savings in its Opinion.

On remand, the Parties originally agreed to rely on the record evidence in the proceeding under review. The Parties briefed and argued the meaning of that evidence before the Commission.

[1] Opinion, p. 6
[2] *Id.*, p. 5

However, rather than rely solely on the record evidence in the Cases under review, the Commission determined to hear additional evidence on the subject of the cost, if any, to replace plastic facilities that were not worn out or in deteriorated condition.

The additional evidence, presented on August 22 and 27, further illuminated Spire Missouri's approach to its main replacement programs, showing that the Company retired plastic when it was not operationally or economic feasible to reuse it. The new evidence confirmed the earlier evidence that the Company's retirement of plastic, where necessary, drove cost reductions, not costs. Therefore, the Commission should again determine that no costs are associated with the replacement of plastic facilities, and so state in its order or orders resolving the six ISRS cases under consideration in this proceeding, specifically, the two 2016 remanded Cases, the two 2017 cases, and the two current 2018 cases.

B. ARGUMENT

Background

From a review of its Opinion, it does not appear that the Western District was particularly familiar with the origins of the Company's replacement programs, which is understandable given the fact that it was not the subject of much discussion during the abbreviated hearing process in the first two ISRS cases.[3] Although a proper understanding is not central to the key issue of what impact, if any, the retirement of plastic facilities had on the Company's ISRS costs, it is helpful

[3] The Western District's confusion may have been aided by Public Counsel's brief, which represented, without any evidence or citation to the record, that "Converting its entire system from low pressure to intermediate pressure is the motivation behind Laclede's 2011 strategy to replace entire neighborhoods." (Ex. B, p. 20) The Court appeared to have accepted this as true even though it was only the opinion of OPC's counsel. In fact, the opposite is true, as Company witnesses Lobser, Buck and Lauber testified. The Company had to have a main replacement program. (Tr. 413, 441) Determining the most cost-effective way to accelerate that program led to an inevitable decision to upgrade the pressure in the cast iron main area of Spire Missouri East's service territory. (Tr. 383-85; Ex. 6, p. 7; Tr. 441) Further, the Company accelerated the Spire Missouri West replacement program even though the pressure issues primarily affected only Spire Missouri East. (Tr. 382, lines 11-15)

for purposes of demonstrating that the replacement programs undertaken by the Company were indeed done to comply with relevant safety requirements.

As the evidence in these proceedings showed, the Company's cast iron and bare steel main replacement programs were mandated as a result of the Commission's rewriting of its gas safety rules in the late 1980s in response to a number of fatal natural gas incidents. The obligation to implement these replacement programs is presently codified at Sections 4 CSR 240-40.030(15)(D)&(E) of those rules.

A number of external factors drove the Company to consider accelerating its cast iron main replacement program in 2010. These included the Commission Safety Staff's active encouragement that the Company devote more resources toward replacing cast iron and unprotected steel facilities once it had completed its soft-copper service line replacement program. The Staff's desire for the Company to substantially accelerate the program was driven in part by the fact that under the current schedule, it would have taken roughly another 80 years to complete the replacement of the facilities, resulting in the use of many inferior facilities that exceeded 200 years old.[4]

The quickened pace of replacing such facilities was also fully in line with the urgent recommendations of federal officials that natural gas operators accelerate the pace of their efforts to replace aging facilities in response to a number of fatal gas incidents, including two that directly involved cast iron facilities. The federal entities viewed tools such as the ISRS Statute in Missouri as largely eliminating financial arguments against making substantial safety investments.[5] Again, this renewed focus on taking actions to ensure the safety and integrity of natural gas distribution facilities was also eventually reflected in the Commission's gas safety rules through its

[4] Hoeferlin Direct, Ex. 3, pp. 8-9
[5] *Id.* pp. 8-10

Distribution Integrity Management Plan requirements.[6] In any event, since Commission Rules 40.030(15)(D) and (E) require the replacement of all cast iron and bare steel main, the costs of the safety replacement programs are all incurred to comply with state or federal safety requirements, as provided in Section 393.1009(5)(a) of the ISRS Statute.

Given the clear message from every regulatory body involved with gas safety, the Company decided to determine the most cost-effective method to accelerate its main replacement program.[7] The Company gathered information from industry groups and its own field crews, and decided that a systematic replacement program that featured directional boring of plastic main to bypass the old cast iron and interspersed plastic was the most economic method available. The Company experimented on some early projects and concluded that the new systematic approach was very effective.[8] With respect to service lines, the Company determined that it would transfer, or reuse, service lines where operationally and economically feasible, and renew, or replace, them where this was not.[9] Since a main replacement required the reattachment of service lines to the main line regardless of the method chosen, the decision to replace service lines did not affect the superiority of the systematic replacement method.[10]

The Commission's regulatory oversight of this acceleration of the Company's replacement programs has been both continuous and robust. The Company has provided the Commission's Safety Staff, as well as federal safety officials, with annual reports detailing the progress made in replacing facilities during the past year and the replacement plans for the upcoming year. Such matters have also been the subject of routine and ongoing discussions between Staff and Company

[6] See 4 CSR 240-40.030(17)
[7] Ex. 3, p. 10, lines 14-22
[8] Tr. 389-91.
[9] Lauber Direct, Ex. 4, p. 5, lines 1-10; Tr. 367
[10] Ex. 3, p. 4, lines 3-9; Ex. 6, p. 6, line 11 to p. 7; Tr. 390-91.

personnel.[11] From the inception of these accelerated programs, the Safety Staff also expressed its view that the costs incurred to implement them were eligible for recovery though the ISRS mechanism – a position that it continued to maintain in the first four ISRS cases under review in these proceedings.[12]

Throughout this period, the Commission has also been kept fully abreast of the scope, pace and other details of these mandated replacement programs and provided the opportunity to make any appropriate adjustments. For example, the Company provided the Commission a detailed overview of the programs at an agenda meeting in 2012 and updated the Commission on their progress in 2013 when committing to accelerate replacements on the Western side of the state as part of the MGE acquisition proceeding. More recently, the Company summarized the progress achieved under the programs in its 2017 rate case proceedings.[13]

Perhaps most significantly, the Company has made ISRS filings approximately every 6 months, affording the Commission an opportunity to review the specific footage of facilities replaced and installed under the programs, as well as associated costs, and make appropriate adjustments. As Mr. Hoeferlin testified, the cumulative impact of these actions has created a level of Commission oversight that matches or exceeds that applied to any other mandated replacement program previously undertaken by the Company. The end result is a program that has been spectacularly successful in making the Company's distribution system safer in the most cost-effective manner possible.[14]

[11] Ex. 3, pp. 12-14; Tr. 359-61; Tr. 391
[12] Tr. 376
[13] Ex. 3, p. 13-14.
[14] Ex. 3, p. 14

Introduction

As previously noted, the critical issue to be decided by the Commission in these proceedings is, of course, how it should determine and treat for ISRS purposes the cost impacts resulting from the Company's retirement of plastic facilities in connection with these programs where it is not operationally or economic feasible to reuse them. As discussed below, the methodology employed by the Company for this purpose utilized multiple engineering analyses to determine how the retirement rather than reuse of plastic facilities *actually* affected the Company's ISRS costs and charges. Conducted over the course of a year and a half in three separate proceedings, these analyses demonstrated that the Company's retirement of plastic facilities in those instances where such facilities could not be practically reused resulted in no incremental increase in the Company's ISRS costs, but instead decreased them. In other words, this practice *avoided* costs rather than *caused* them. Based on the application of traditional ratemaking and cost allocation principles, no adjustment to the Company's ISRS charges should be made in connection with these non-existent or negative costs.[15]

In contrast, the methodology employed by OPC and Staff simply disallows ISRS costs based on the percentage of plastic retired. It is nothing more than a rote mathematical exercise that has no relationship to the actual impact that such retirements have had on ISRS costs and charges. Significantly, in the first evidentiary hearing held in this proceeding, *every* party to this proceeding, including Staff and OPC, raised serious concerns regarding the propriety of using such a percentage-based method and *no* party even attempted to explain why such a method might be appropriate. This complete lack of justification for a percentage-based method was made even more evident during the second evidentiary hearing, where the primary witnesses for Staff and

[15] Ex. 3, pp. 12-14; Tr. 359-61; Tr. 391

OPC freely conceded that they did not know what impact, if any, the retirement of the plastic facilities had on the Company's ISRS costs and charges. They also acknowledged that the percentages they had calculated bore no relationship to such cost impacts.[16]

Given these considerations, the Company respectfully submits that the only Commission decision that can be reconciled with the evidence in these proceedings and the Western District Court of Appeals Opinion is one which determines that no adjustment to or disallowance of the Company's ISRS charges is warranted. In its Opinion, the Western District determined that the Commission could not include plastic facilities that were not worn out or in a deteriorated condition in the Company's ISRS charges and remanded the Cases to the Commission for further proceedings to determine what costs, if any, were caused by the replacement of those non-ISRS eligible plastics. The Commission has now conducted those proceedings and the undisputed evidence clearly and unambiguously demonstrates that there are no positive costs resulting from the retirement of such plastic facilities, only negative ones. Accordingly, there are no ineligible costs to exclude and the Commission should so determine. It would be arbitrary and capricious to assign costs to an activity that reduces costs.

Such a result is also mandated by the Court's Opinion for another reason, namely the Opinion's reaffirmation of the bedrock principles that for a Commission's Order to be valid, it must be based on competent and substantial evidence on the record, not arbitrary or capricious or the result of an abuse of the Commission's 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

[16] Ex.5, pp. 7-10; Tr. 451, 469-71, 562-63.

satisfies these fundamental requirements. In contrast, disallowing ISRS costs based on the wholly unsupported methodology proposed by OPC and Staff, and ignoring the unrefuted competent and substantial evidence provided by the Company, would constitute the very kind of arbitrary and capricious action and abuse of discretion that the law forbids.

Finally, there is no reason why the Commission should hesitate to make such a finding. In its Opinion, the Court of Appeals based its reversal of the Commission's Order in the Cases on its determination that costs for the replacement of non-ISRS eligible plastic components could not be included in the ISRS based on a theory that plastic facilities were simply part of a larger cast iron or unprotected steel system that was being replaced. In rejecting this theory, however, the Court did not reach the issue of what it actually cost, if anything, to retire plastic facilities that could not be reused because the Commission did not attempt to address that issue in its Report and Order, or in the Reconciliation provided pursuant to Section 386.420.4 RSMo. The Commission should now address the cost issue and permit the Court of Appeals to evaluate the lawfulness and reasonableness of the Commission's Report and Order based on this consideration and the additional evidence that has been provided.

I. Remanded Matters

Combined Issues: a. Potential Costs and c. Methodology

What costs, if any, were recovered through Spire Missouri East's and West's 2016 and 2017 ISRS for the replacement of ineligible plastic components not in a worn out or in a deteriorated condition and what is the appropriate methodology for making this determination?[17]

Neither Spire Missouri East nor Spire Missouri West collected any costs in their 2016 and 2017 ISRS filings for the replacement of ineligible plastic components not in a worn out or

[17] Because the issues of: (a) what costs, if any, were recovered through the Company's ISRS for the replacement of plastic components and (c) what is the appropriate proper methodology for determining such costs are so inter-related, the Company will address them together in this section. The remaining issues under "Remanded Matters" will then be addressed in the order they appear in the issues list.

deteriorated condition. As the Company's evidence in those cases showed, the Company's practice of retiring plastic facilities where it is not operationally and economically feasible to reuse them has served to reduce, rather than increase, the overall level of ISRS charges sought by the Company and approved by the Commission in these filings. In other words, the costs of retiring or replacing rather than reusing the plastic facilities at issue are negative, not positive.[18]

As discussed below, this conclusion has been confirmed by testimony filed in the Company's 2016 ISRS cases, by testimony filed in its 2017 rate cases, by additional testimony filed in the above titled cases on August 22, 2018, and by testimony added to the record in these cases on August 27. It is based on an extensive engineering analysis of ten projects, nine of which were previously selected by OPC to illustrate the Company's practice of retiring certain plastic facilities as part of its cast iron and unprotected steel programs when it is not feasible to reuse such facilities. The end result of these analyses is a fact-driven assessment of the actual impact that this practice has had on ISRS costs and charges.[19] In contrast, the disallowances and refunds proposed by Staff and OPC are based on nothing more than an unsupported assumption that the retirement of any plastic facilities directly and proportionally increases the costs incurred to install new facilities – an assumption that has been shown to be demonstrably false by the actual analysis of cost impacts undertaken by the Company.[20]

As the Commission recognized in its Procedural Order in this case, an accurate determination of what, if any, costs have been recovered by the Company as the result of its retirement rather than reuse of plastic facilities depends first and foremost on the integrity, accuracy and reliability of the methodology used to make that determination. As discussed below,

[18] Ex. 3, p. 4, line 16 to p. 7, line 2
[19] Id., pp. 4-5; Ex. 3, Sch. CRH-D1; Ex. 4, pp. 3-4
[20] Ex. 5, pp. 7-10

the validity of the Company's method for making this determination is not only undisputed by any other party, but is also the only one that makes any meaningful attempt to actually analyze and quantify such impacts. In contrast, the percentage-based method proposed by Staff and OPC is simply a mathematical exercise that would adjust ISRS costs and charges based on a rote application of those percentages to the cost of installed facilities. It is devoid of any attempt to show cost causation, and so is arbitrary in its approach. Notably, witnesses for all three parties expressed serious reservations about the propriety of such a method in the first evidentiary hearing held in the two original ISRS cases.[21] The basis for those reservations was fully revealed during the most recent evidentiary hearing when the experts for both Staff and OPC acknowledged that the mathematical results produced by their method said nothing about the actual impact on plastic retirements on ISRS costs and charges.[22] For all of these reasons, the Commission should conclude that no disallowance to the Company's ISRS costs or charges in any of these proceedings is warranted.

(a) The Company's Methodology

From the outset of these proceedings, the Company's methodology has been based on engineering analyses which are designed to determine the *actual* impact of replacing or retiring plastic facilities. rather than reusing them, on the Company's ISRS costs and charges. These analyses have been presented on numerous occasions in multiple proceedings. All have arrived at the same result – that the Company's retirement rather than reuse of plastic facilities has served to reduce, rather than increase, its ISRS costs and services.

(1) <u>The first analysis</u>

The first analysis was submitted over 18 months ago – on December 23, 2016 to be exact

[21] *Id*.; Tr. 411-12
[22] Tr. 451, 469-71, 562-63

– in the first two ISRS cases under review here. It was sponsored by Company witnesses Mark Lauber, the Company's then Director of Health and Safety, Environmental and Crisis Management.[23] Mr. Lauber, has been a practicing engineer for over thirty years and during that time span has amassed substantial experience overseeing various natural gas pipeline replacement, construction, maintenance, safety compliance and risk assessment matters for the Company.[24]

Mr. Lauber testified that there was *no* added cost associated with the incidental replacement of plastic facilities. To the contrary, he testified that reusing plastic facilities would have been significantly more expensive than replacing them via the method chosen by the Company.[25] As a result, in those instances where the Company retired or replaced plastic facilities, rather than reused them, such action served to reduce, rather than increase, the Company's ISRS costs and charges.

As Mr. Lauber explained, this cost-reducing impact is primarily a function of the physical differences between how plastic mains are installed today and how the aging facilities being replaced were installed decades ago. Specifically, the cast iron and steel mains being replaced as part of these ISRS projects were typically installed deeper than is required or necessary for plastic pipe.[26] These older mains are also commonly under pavement, a situation that the Company seeks to avoid, where possible, when installing plastic pipe for replacement of these mains.[27]

Mr. Lauber's testimony was further confirmed by Company witness Glenn Buck who testified that most of the plastic that is interspersed throughout the Company's current cast iron system is buried under pavement.[28] As a result, the cost to uncover, reconnect, rebury and, repave the interspersed plastic would be much more costly than abandoning it in place and would therefore

[23] Ex. 4, pp. 1-2.
[24] *Id*.
[25] Ex. 4, pp. 3-4; Sch. MDL-D1; First Hearing: Ex 3, pp. 10-11; Ex. 2, p.11.
[26] First Hearing: Ex. 3, p. 10.
[27] *Id*.
[28] First Hearing: Ex. 2, p. 11.

put upward, rather downward, pressure on costs and the resultant ISRS rates.[29] These same considerations also applied to plastic service lines where the Company was routinely able to reduce its replacement costs by retiring plastic service lines where it would have been more expensive or operationally infeasible to reuse them.

Notably, no party submitted any evidence or otherwise took issue with either the facts underlying the analyses presented by Mr. Lauber and Mr. Buck or the results of those analysis. Accordingly, the Company's assertions on this critical issue were undisputed on the record.

(2) <u>The second analysis</u>

The second engineering analysis of the cost impact of retiring plastic facilities was also performed by Mr. Lauber and submitted nearly 10 months later in the form of rebuttal testimony in the Company's most recent rate case proceedings, Case Nos. GR-2017-0215 and GR-2017-0216. The primary difference in this second engineering analysis is that Mr. Lauber provided a more detailed analysis, and an actual quantification, of the cost impact resulting from the retirement rather than reuse of plastic facilities.[30] As shown by Schedule MDL-D1 to Exhibit 4, which included a copy of this rebuttal testimony, Mr. Lauber analyzed a specific cast iron main replacement project in which plastic comprised about 8.5% of the total being replaced – a circumstance that is generally consistent with the Company's experience.[31]

In explaining his analysis in the rate cases, Mr. Lauber testified that the only two options available to the Company in order to maintain service to its customers was to reuse the existing

[29]*Id.* As Mr. Buck testified, the retirement of plastic pipe as a part of the cast iron and bare steel replacement programs also allowed the Company to reduce the amount of the ISRS revenue sought in these cases for a number of reasons – namely, thorough the recognition of lower depreciation expense. (Ex. 2, p. 11, lines 3-13). For just the projects identified by OPC witness Hyneman, this depreciation-related reduction in ISRS charges for the plastic facilities that were retired was worth approximately $53,000[29], rising to well over $200,000 in reduced ISRS charges when the impact of all retirements is considered. (*Id.*; *see also* Ex. 4, Appendix B, p. 3; Ex 5, Appendix A, p.1; Tr. 97, line 25; Second Hearing: Ex. 6, p.9; Tr. 492).
[30]Second Hearing, Ex. 4, p. 4.
[31]*Id*.

plastic component by tying in the old facilities to the new facilities or to retire and bypass the old facilities by installing new ones. Accordingly his analysis compared the cost of both alternatives and showed that attempting to reuse the plastic rather than simply retire it would have created significant additional work, incurred further complications and increased the project's cost by approximately 20%.[32] In short, the approach to reuse the plastic would cost approximately $341 thousand while the decision to retire the plastic pipe instead cost roughly $286 thousand.[33] As a result, there was no incremental cost at all to retire these plastic facilities; in fact, the retirements resulted in a negative cost which means that the Company's ISRS costs and charges were *lower*, not *higher*, than they otherwise would have been as a result of this action.[34]

Again, no party to the rate cases, including Staff and OPC, challenged any aspect of Mr. Lauber's analysis. Accordingly, the Company's assertion that the retirement of plastic facilities had the effect of reducing, rather than increasing, its ISRS costs and charges remained undisputed for a second time.

(3) The third analysis

The Company's third engineering analysis of how the retirement, rather than reuse, of plastic facilities affected the Company's ISRS costs and charges was prepared for the evidentiary hearing held on August 27, 2018. In this instance, the analysis was prepared by or under the supervision of Craig R. Hoeferlin, the Company's Vice President of Operations Services.[35] In his current position, Mr. Hoeferlin manages the Company's engineering, pipeline safety and replacement programs, environmental compliance, operations training, GIS and system planning,

[32] *Id.*
[33] *Id.*
[34] *Id*.
[35] Second Hearing, Ex. 3, p. 4.

damage prevention, right of way, standards and testing, and employee safety departments.[36] In addition to providing engineering services to the Company for nearly 35 years, Mr. Hoeferlin is a past chair and current member of the Operating Section Managing Committee for the American Gas Association. In that capacity, he interacts with Federal Pipeline and Hazardous Materials Administration (PHMSA) as well as the staff of the National Transportation Safety Board. Mr. Hoeferlin, is also a board member of the Common Ground Alliance (CGA), a national organization committed to preventing damage to underground infrastructure and a past president and current member of the Missouri One Call Systems (MOCS) Board of Directors.[37] Finally, Mr. Hoeferlin had and continues to have extensive hand-on experience in the design and operation of the Company's cast iron and unprotected steel replacement programs.

For purposes of his analysis in this case, Mr. Hoeferlin evaluated a variety of actual projects where plastic facilities were retired rather than reused.[38] Since connecting service lines to the new main is an indispensable element to having the main serve its intended function – namely providing natural gas service to our customers – the evaluations included an assessment of both main and service line costs.[39] This detailed evaluation included an assessment of what it would cost to complete the project under the approach taken by the Company compared to what it would have cost the Company to reuse rather than retire plastic facilities, since these are the only two options that are practically available to the Company. Notably, in performing his evaluation, Mr. Hoeferlin used the same nine work orders that were handpicked by OPC in the previous ISRS cases (and that were referenced by the Court of Appeals in its Opinion). Mr. Hoeferlin also

[36] *Id.,* p. 1
[37] Second Hearing, Ex 3, pp. 1-2
[38] Second Hearing, Ex. 3, pp. 3-4.
[39] Second Hearing, Ex. 3, p. 4.

applied the same detailed evaluation to the one project evaluated by Mark Lauber in his rebuttal testimony.[40]

As shown by Schedule CRH-DI, the engineering analyses Mr. Hoeferlin performed showed that on a net basis the Company reduced, rather than increased, its replacement costs by retiring plastic facilities where it was not operationally or economically feasible to reuse them. Specifically, by retiring rather than reusing plastic facilities, the Company reduced its ISRS costs on eight of the projects by 1% to 5%.[41] Only on one of the projects did it actually cost more (2%), or about $12,000, to retire rather than reuse the plastic facilities.[42] When combined with the cost reductions achieved on the other eight projects, this netted to a cost reduction of $113,000 on those chosen by OPC to demonstrate significant plastic replacements. Adding the one analyzed by Company witness Lauber in his testimony, the Company reduced its replacement costs by a total amount of $230,000, or 5% across all ten projects by retiring rather than reusing the plastic facilities associated with these projects.[43]

Once again, no party took issue with or otherwise challenged the factual basis for, or results derived from, Mr. Hoeferlin's analyses of these projects. In fact, a Staff witness acknowledged that an analysis of more work orders would likely yield a similar result.[44] Accordingly, the Company's contention that that the retirement of plastic facilities has served to reduce rather than increase the Company's ISRS costs and charges remained undisputed for the third time.

(4) Application of long-standing ratemaking and cost allocation principles

[40] Second Hearing, Ex. 3, pp. 3-4.
[41] Second Hearing, Ex. 3, p. 5.
[42] *Id.*
[43] *Id.*
[44] Tr. 498-99

In light of this overwhelming evidence showing that the Company's practice of retiring plastic facilities rather than reusing them has permitted the Company to avoid costs rather than incur them, Company witness Eric Lobser went on to explain why no adjustment to the Company's ISRS revenues or costs was appropriate under ratemaking and cost allocation principles long recognized and used by the Commission. As Mr. Lobser, who is the Company's Vice President for Regulatory and Government Affairs, explained, the Commission has for many years recognized that in allocating costs between classes, charges and functions, that cost causation principles should be used to ensure that cost responsibility for a particular utility service is allocated or assigned to who or what is causing a particular cost to be incurred. A good summary of this long-standing principle was provided by the Commission in ***Re: Missouri Gas Energy***, Case No. GR-2004-0209, (2004), in which the Commission observed:

> An allocation of revenue among the various classes begins with a class cost of service study. Such studies seek to assign cost responsibility based on **cost causation principles** by classifying all cost elements as customer-related, demand-related, or commodity-related. The guiding principle is that the class that causes the cost should be required to pay rates that will allow the utility to recover that cost. (*Emphasis supplied*).[45]

The Commission has also recognized that a utility's ability to avoid the incurrence of costs through various actions is something that has a real and definable economic value. In fact, the Commission's own rules specifically incorporate this concept. For example, 4 CSR 240-20.092.(1)(NN) of the Commission's rules set forth the ratepayer impact measure (RIM) test for evaluating the efficacy of various demand side programs. The RIM is defined as "a measure of the difference between the change in total revenues paid to a utility and the change in total cost

[45] Ex. 5, pp. 5-6

incurred by the utility as a result of the implementation of demand side programs. The benefits are the *avoided costs* as a result of implementation." (emphasis supplied).[46]

Applying these cost causation and avoided cost principles to the engineering analysis would say that the activities to replace rather than reuse plastics caused costs to be lower or, stated another way, the only way costs would have been caused would have been to undertake the efforts to reuse rather than replace the existing plastic facilities. In these comparative analyses, added costs would be caused by reuse, while lower costs would be caused by replacement. Staff and OPC never disputed this analysis and never attempted to show any cost causation driven by the replacement rather than reusing the plastic facilities.[47] Their assumption that the percentage of plastic footage replaced caused the incurrence of cost to install is therefore arbitrary and capricious.

Given these principles, there is simply no policy or other basis for adjusting the Company's ISRS costs or charges based on an activity that avoids rather than causes costs. To the contrary, because the retirement of plastic facilities resulted in negative costs, any principled attempt to exclude the cost impact of this activity would require that the Company's ISRS revenues be increased above the level sought by the Company. Since customers are already receiving the benefits of a lower cost approach to the main replacement programs, there is no justification for artificially reducing those costs to provide a further refund.

(5) Other benefits

Based on the evidence discussed above, it is clear that Company's practice of retiring plastic facilities where they could not be practically reused resulted in lower capital costs which, in turn, reduced the level of ISRS costs and charges sought by the Company. This practice, combined with the more systematic approach taken to replacing aging facilities, has produced

[46] Ex. 5, p. 4
[47] Ex. 5, p. 3, lines 18-25; p. 9, line 11, to p. 10, line 4

other benefits as well *in addition* to these reductions in ISRS costs. As Company witness Craig Hoeferlin explained in his direct testimony, the acceleration of these replacement programs has also served to reduce maintenance expenses associated with the monitoring and repair of leaks, gas cost expenses, tax expenses and other similar costs.[48] Customers have received the full benefit of these cost reductions since they were flowed through to the Company's customers as recently as Spire Missouri's last general rate case proceedings, which concluded in March of this year.[49]

The accelerated replacement of these aging facilities taken by the Company in the more systematic way has also enhanced the safety of its system. As Mr. Lauber testified and the Commission concluded in its previous Report and Order in this proceeding, independent of the cost savings generated, the Company's approach to replacing its cast iron and unprotected steel facilities has also resulted in a safer system and permitted it to more effectively comply with various federal and state safety requirements.[50] Again, it should be emphasized that while these are very important benefits, they are *additional* benefits on top of the cost reductions customers have received from the Company's practice of retiring rather than reusing plastic facilities.

In summary, the methodology employed by the Company has shown through careful engineering analyses that the replacement of plastic facilities has reduced rather than increased its ISRS costs and charges. If the Commission is looking for a methodology that can be used in the future to make similar assessments, as Staff's own witness David Sommerer testified, it is one that could be readily replicated.[51] For this reason alone, the Commission should reject any proposed disallowance or refund of those costs. As previously discussed, and further substantiated below, such a determination is the only that can be reconciled with the principles laid out by the Western

[48] Ex. 3, pp. 7.
[49] *Id.*
[50] Ex. 3, p. 8
[51] Tr. 498-99

District Court of Appeals Opinion; specifically, that any valid Commission Order must be based on competent and substantial evidence and not arbitrary or capricious. The fact that the Company's approach towards replacing its cast iron and unprotected steel facilities has produced other benefits in addition to these capital cost reductions only underscores why the Commission should make such a determination.

(b) OPC's and Staff's methodology

The methodology advocated by OPC and Staff for determining the amount of ISRS costs and charges that should be disallowed because of the retirement of plastic facilities is not really a methodology at all. Instead, it is simply a mathematical exercise where the percentage of plastic facilities retired (as measured in retired feet) versus other facilities retired is determined and then applied to exclude an equivalent percentage of installed facilities (as measured in installation costs). Such a method simply assumes that the Company's ISRS installation charges were increased in direct proportion to the percentage of plastic facilities retired. Both OPC and Staff have clearly stated that they have no explanation or justification to support how or why the use of such a simple percentage of the plastic facilities retired reasonably or accurately reflects the cost impact of plastic retirements. In fact, they are frankly willing to state that the percentage of plastic retired bears no relation to the cost of retiring it.[52]

(1) Failure to justify methodology in first hearing

The failure of Staff and OPC to provide a plausible justification for their proposed methodology was initially evident from a review of their post-remand submissions in which they addressed the evidentiary record from the first hearing in Case Nos. GO-2016-0332 and Case No. GO-2016-0333. Although they claimed in these submissions that there was some evidentiary

[52] Tr. 451, 469-71, 562-63

support for their method, a review of their actual citations to the evidentiary record clearly showed otherwise. The best that Staff could do in this regard was to reference a statement by Company counsel during the evidentiary hearing 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."[53]

The first reference is meaningless as the Company has never denied that the amount of plastic pipe replaced could be identified, but has instead maintained, without dispute by any other party, that such plastic retirements have not resulted in any incremental increase in the Company's 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"[54]; that "I don't think that's how you could do that"[55]; that "I don't think that's a logical way to look at it, no."[56]; and that "I wouldn't agree with it . . ."[57]. The fact that the only expert Staff could cite in support of its methodology actually disavowed it not just once but four times in rapid succession is a telling indication of how little evidentiary support there is for it.

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

[53] First Hearing, Staff Report, p. 7.
[54] Tr. 100, lines 14-15.
[55] Tr. 101, lines 22-23.
[56] Tr. 102, lines 4-5.
[57] Tr. 102, lines 12-13

opinion or identified in Staff workpapers.[58] 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 its Initial Brief on Remand, OPC continually references *footage* instead of *dollars* and never addresses how it concluded that one causes the other. Nor, as previously noted, did either OPC or Staff 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 in the earlier cases 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. In the first evidentiary hearing, 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."[59] Nowhere in his written testimony, however, did Mr. Hyneman actually propose such a method, simple or otherwise.[60]

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.[61] 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

[58] OPC Initial Brief, p. 6; Tr. 560-61
[59] OPC Ex. 1, p. 10, lines 5-6.
[60] Staff Ex. 5, p. 6, lines 16 to 18; Second Hearing: Ex. 5, pp. 9-10.
[61] Tr. 229, line 24 to Tr. 232, line 19; Second Hearing: Ex. 5, pp. 9-10

necessarily be appropriate, especially where the length of facilities being installed is less than the length of facilities being replaced.[62]

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 in the first two ISRS cases 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 had not developed a methodology for it. 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].[63]

Incredibly, both OPC and Staff are now recommending the exact same arbitrary formula 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 methodology proposed by OPC and Staff when the Company, Staff and OPC have all previously testified that such a method cannot be relied upon.

(2) Failure to justify methodology in second hearing

The Commission's decision to schedule a second evidentiary hearing gave both OPC and Staff an additional opportunity to explain how their percentage-based methodology could be relied upon to ascertain what costs, if any, were being recovered by the Company in its ISRS charges as the result of the retirement of plastic facilities that were not in a worn-out or deteriorated condition.

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[62] *Id.*

[63] Staff Brief, p. 24. 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).

Again, they failed to do so. In fact, the primary witnesses for both Staff and OPC on this issue confirmed in multiple ways that no such justification exists.

For example, both Staff witness Kim Bolin and OPC witness John Robinett testified on cross examination that they did not know whether or to what extent the percentage of plastic retired on a particular project actually affected the ultimate cost of that project. They freely acknowledged that just because plastic may have comprised say 15 percent of the facilities retired on a particular project, that did not mean that the cost of the project was 15 percent higher as a result of those retirements. In fact, it was apparent that neither Ms. Bolin nor Mr. Robinett had any idea of what the cost drivers were for any of the projects for which they disallowed costs based on these simple percentages.[64] Staff witness Sommerer conceded that the percentage of plastic in the old main had no effect on the cost of installing the new main, because the cost to install new main that bypassed the old main would be the same regardless of the amount of interspersed plastic in the old main.[65] This truism directly contradicts Staff's and OPC's percentage based methodology.

Moreover, while OPC and Staff postured their methodologies as something that was developed to implement that the Western District Court of Appeals' Opining regarding the ISRS ineligibility of plastic facilities that were not worn out or in a deteriorated condition, it is clear that they gave very little consideration to what the Court actually said on the matter in developing their methodology. As both witnesses acknowledged, their chosen methodology for "determining" the ISRS costs associated with the retirement of plastic facilities is nowhere to be found in the Court's opinion, but is instead a creature of their own invention.

It is also a methodology that simply ignores key elements of the Court's opinion. For example, in its Opinion, the Court indicated that there were instances where the replacement of

[64] Tr. 451, 469-71, 559-63
[65] Tr. 497-498

"nearby" plastic pipe would be eligible for ISRS inclusion. In their apparent haste to propose the largest possible adjustment to the Company's ISRS costs and charges, however, OPC and Staff structured their methodology in a way that provided no allowance for such a circumstance. Instead, the method adjusts for all plastic on a blanket basis, without regard to the Court's instructions. As a result, even in those instances, where plastic made up only a minimal percent or two of a project's total retirements, such minimal amounts of plastic were nevertheless used to disallow ISRS costs.[66]

Another example was the Opinion's citation to the useful service lives of the plastic facilities being retired, as determined by depreciation professionals. The Court was clear in the Opinion that it only sought to disallow plastic facilities that were not worn out or in a deteriorated condition. Although the Court stated in its Opinion that no party in the initial hearing had claimed that the plastic facilities being retired were worn out or in a deteriorated condition, its citation to the useful service lives of plastic mains and services suggests that older plastic facilities that are at or past their useful service lives might qualify as such. Once again, however, neither OPC nor Staff attempted to adjust their methodology to take such a factor into account, even though Company witness Glenn Buck was able to determine that approximately 8 percent of its service lines exceeded their useful life.[67]

Mr. Buck also identified a wide variety of other flaws in the methodology employed by Staff and OPC to adjust the Company's ISRS costs and charges. Among others, they include:

(a) the failure to recognize that in many work orders the amount of cast iron and steel replaced exceeded the amount of new plant installed;

[66] Tr. 467-69
[67] Ex. 6, p. 8, lines 1-7.

(b) the exclusion of mandated relocation costs, even though the amount of plastic facilities retired in such relocations is irrelevant because mandated relocations are covered under ISRS and are not being challenged;

(c) the removal of other ISRS eligible costs necessary to comply with "angle of repose" safety requirements;[68]

(d) the exclusion of the costs of "transferring" or connecting service lines to a new main – costs that must be incurred regardless of whether the service line is being retired or reused;[69]

(e) the exclusion of blanket work order costs incurred to meet other safety requirements unrelated to the Company's replacement programs.[70]

Staff's removed the cost of blanket work orders in the same proportion as the plastic it found in the main replacement programs. This is a particularly egregious and substantial error, accounting for over half of Staff's entire disallowance. As opposed to large projects like main replacements, blanket work orders cover numerous small projects where safety work is required. This would include service lines and mains that are not part of the cast iron or bare steel replacement program, but need to be replaced because they have become worn out or are in deteriorated condition. This would include plastic as well as other materials. All of this work is ISRS-eligible without question and Company witness Glenn Buck verified that with an analysis that looked at a typical blanket work order and determined that out of over 110 tickets for individual jobs, every replacement was done for a safety-related reason, including leaks, corrosions

[68]Angle of repose situations arise when the ground beneath a cast iron facility is no longer sufficient to support the facility – a circumstance that can lead to abrupt breakage. Inexplicably, while Ms. Bolin allowed costs to correct "angle of repose" situations when they resulted from a relocation project, she excluded them when they were incurred to comply with Commission safety rules. (Tr. 445). It was clear from cross-examination that Ms. Bolin was unaware of the safety rules applicable to such situations. (Id.)

[69] Ex. 6, p. 6, lines 11-13

[70] Ex. 6, p. 6; Tr. 417, line 24 - 421

and the existence of copper pig tails.[71] The Staff could have done a similar sampling to confirm the safety-related justification for each of these blanket work order costs, but instead chose to substitute the application of its flawed percentage methodology for real analysis. The Commission should deny all of Staff's indiscriminate disallowance of this mandated safety work.[72]

In the end, the record clearly demonstrates that the arbitrary formula proposed by Staff and OPC to determine ineligible ISRS costs does no such thing. It is completely unmoored from any assessment of the actual impact of plastic retirements on ISRS costs and charges, ignores critical elements of the very Court Opinion that it claims to implement, is unsupported by any recitation to recognizable principles of ratemaking and cost allocation, and has numerous other flaws. All of these considerations make their proposed methodology useless as a method for determining the actual impact of plastic retirements on the Company's ISRS costs and charges.[73]

GRAIN BELT EXPRESS CLEAN LINE CASE

During the hearing on August 27, Chairman Hall referenced the recent judicial decisions involving the Grain Belt Express Clean Line transmission line request for a certificate of convenience and necessity.[74] Originally, the Western District Court of Appeals determined that county by county approval was required for Grain Belt to receive a certificate, and the Commission reluctantly acted on the Court's instruction by determining that it could not grant a line certificate absent such approvals. Ultimately, the Western District's legal analysis was unanimously rejected, first by the Eastern District Court of Appeals, and then by the Missouri Supreme Court.

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[71] Ex. 6, p. 6.
[72] *Id.*
[73] Ex. 6, pp. 8-9
[74] ***Grain Belt Express Clean line LLC v. Public Serv. Comm'n***, 2018 WL 3432778 (Mo. Sup. Ct., decided July 17, 2018)

The Missouri Supreme Court faulted the Western District for not identifying the different requirements for obtaining a line certificate versus an area certificate. The Supreme Court also faulted the Commission for repeating this error and not taking the initiative to distinguish the Western District's decision by recognizing the difference between a line certificate and an area certificate. While courts regularly make these kinds of distinctions so as not to incorrectly apply the holding of an earlier court, the Commission, as an administrative agency, was probably reluctant to assert such a distinction against an appeals court.

The lesson offered by the Supreme Court in the ***Clean Line*** case is for the Commission not to blindly follow a court when the facts call for a distinction to be made. In these ISRS cases, the Western District was unaware of the history and facts supporting the ISRS-eligibility of the Company's safety replacement work; facts that are well known to a Staff that has encouraged and supported that work and its ISRS-eligibility for years; and facts that are well known to the Commission, which approved the Company's 2016 ISRS applications. The Western District is the superior legal body; but the Commission is superior in evaluating safety work and the costs thereof. As in the ***Clean Line*** case, the Supreme Court would expect the Commission to use its expertise to apply the facts to the ISRS Statute, and not abdicate that expertise in a way that makes a clear error by following an unsupported and irrational cost methodology.

Based on the Commission order before it, the Western District questioned the ISRS-eligibility of the Company's replacement of plastic and remanded the case to the Commission to determine the costs thereof. It is the Commission's duty to issue an order explaining to the Court why those costs don't exist.

In summary, the Western District understood that plastic is being replaced at some level, but did not understand the full picture, and thus remanded the case to the Commission for further

proceedings. This remand proceeding provides an opportunity for the Commission to tell the rest of the story about why it approved the ISRS charges in the Cases, and why the replacement of plastic did not increase the cost of the replacement programs. If the case is again appealed to the Western District, the Court will have a better record upon which to judge the Commission's decision. The Company is confident that once the Court has the benefit of the additional evidence and the Commission's expert assessment of that evidence, it will conclude that the Company's replacement of cast iron and bare steel at a lower cost is fully consistent with the ISRS statute, and that the expenditures made by the Company during the six ISRS cases under review were fully eligible for recovery through the ISRS mechanism.

AUTHORITY TO ISSUE REFUNDS AND MOOTNESS

At the hearing, both Chairman Hall and Commissioner Kenney questioned whether the Commission has the authority to issue refunds. Commissioner Kenney specifically referred to ***Re: Missouri American Water Co***., 516 S.W.3d 823 (Mo. banc. 2017), an ISRS case that followed prior holdings that the challenge to a tariff is mooted upon that tariff being superseded by a new tariff. In ***Missouri American***, the Supreme Court found that the resetting of the water company's ISRS charge to -0- in its rate case mooted the challenge by Public Counsel that the prior ISRS charge was unlawful due to the population of St. Louis County falling below the benchmark of 1 million persons.

A case is moot when the question presented for decision seeks a judgment upon some matter which, if the judgment was rendered, would not have any practical effect upon any then existing controversy.' " ***Atteberry v. Mo. Bd. of Prob. & Parole,*** 193 S.W.3d 444, 446 (Mo.App. W.D.2006). There are a line of cases that find that tariffs that are superseded by subsequently filed tariffs are generally moot and are not considered on appeal because superseded tariffs cannot be

corrected retroactively. ***State ex. rel. Praxair, Inc. v. Pub. Serv. Comm'n***, 328 S.W.3d 329, 334 (Mo. App. 2010). In the present case, Spire Missouri's 2017-18 rate case has, like Missouri American's, reset the ISRS to -0-, such that the ISRS tariff charges which were appealed in the Cases no longer exist.

Since mootness is a threshold question, the Commission could very well issue an order making only a finding that this matter has been mooted by subsequent tariff. Further, there is nothing in the ISRS Statute that preserves the right to appeal a superseded ISRS tariff. In fact, the ISRS Statute itself sets out the process for adjusting ISRS charges in the event there is a disallowance by the Commission of such charges. Subsection (8) of Section 393.1015 provides that such adjustments must be made in a general rate proceeding and that any cost disallowance resulting from such adjustment be reflected as an offset to the next ISRS filing by the utility.

OPC seemed to recognize this requirement when it filed testimony in the Company's recently filed rate cases in which it raised the plastic issues, and then again when it filed an untimely amended application for rehearing of the Commission's Order in those cases in which it suggested that an adjustment relating to the plastic issues should be made. In the rate cases themselves, however, OPC never quantified or pursued such an adjustment, as reflected by its absence in the List of Issues filed by the Parties on December 1, 2017 in those cases.[75] Instead, it entered into the Partial Stipulation and Agreement on December 13, 2017, of which the Commission has taken judicial notice. Paragraph 9 of that Partial Stipulation and Agreement states as follows:

[75]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). It should be noted that Ordered paragraph 2 (b) of the Commission's May 24 Procedural Order in the rate cases, the "[t]he Commission will view any issue not contained in this list of issues as uncontested and not requiring resolution by the Commission.

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

Notably, there is nothing in this provision to indicate or even imply that the Company's historical ISRS costs would be subject to a potential adjustment to exclude these ISRS costs but instead strongly indicates that current ISRS charges were to be rebased without adjustment. As a consequence, the request by Staff and OPC to have the Commission approve such adjustments at this point is contrary to this provision of the Partial Stipulation and Agreement that was entered into by the Company, OPC, Staff, and other parties, and subsequently approved by the Commission in its March 7, 2018 Amended Order. As stated above, such adjustments of historical ISRS costs incurred before or during the Company's most recent rate cases would also be inconsistent with the ISRS adjustment procedures set forth in the ISRS statute itself which indicate that any such adjustments should be proposed and adjudicated by the Commission in a rate case.

The 2003 ISRS Statute does pre-date a change in Section 386.520, which took place in 2011. Section 386.520.2 RSMo authorizes the Commission to adjust prospective rates where a judicial decision determines that the rates the Commission previously approved were unlawful or unreasonable. Section 386.520.2(1) states as follows:

> In the event a final and unappealable judicial decision determines that a commission order or decision unlawfully or unreasonably decided an issue or issues in a manner affecting rates, then the court shall instruct the commission to provide temporary rate adjustments and, if new rates and charges have not been approved by the commission before the judicial decision becomes final and unappealable, prospective rate adjustments. Such adjustments shall be calculated based on the record evidence in the proceeding under review and the information contained in the reconciliation and billing determinants provided by the commission under subsection 4 of section 386.420 and in accordance with the procedures set forth in subdivisions (2) to (5) of this subsection

It is not at all clear that Section 386.520.2 applies in this case. First, there is no indication that this section was intended to disturb the more specific adjustment procedures for ISRS costs set forth in Section 393.1015. Second, the Western District Court's Opinion did not instruct the Commission to make any adjustment relating to the plastic issues, as 386.520.2(1) contemplates. Third, if there were to be adjustments, they must be calculated "based on the record evidence in the proceeding under review" and under the billing determinants provided by the Commission in its Section 386.420.4 reconciliation. On remand, the parties first argued the record evidence in the proceeding under review. However, the Commission decided it must take additional evidence that was not in the record under review. Further, the reconciliation was not helpful as there was no agreement by the parties as to an amount at issue. In short, it would appear that Section 386.520.2 is intended to apply where there is a discrete, quantifiable amount at issue in the original record that the Court can identify, and then instruct the Commission to make an appropriate adjustment. That does not appear to be the case here.

But even if Section 386.520.2 was applicable, it is clear that no such adjustment should be made or approved by the Commission given the evidence presented in this proceeding. Subsection 2(3) of Section 386.520 specifically states that an adjustment shall only be made: "If the effect of the unlawful or unreasonable commission decision was to increase the public utility's rates and charges by a lesser amount than what the public utility would have received had the commission not erred." Based on the competent and substantial evidence on the record, it is clear that the Company's retirement of plastic facilities where they could not be practically reused served to reduce the Company's ISRS costs and charges. Accordingly, any error or unlawful or unreasonable action taken by the Commission in approving the Company's historical ISRS charges in its prior orders could not have "increased the public utility's rates and charges by a lesser amount

than what the utility would have received had the commission not erred." Simply put, there is no adjustment under Section 386.520.2 even if the Commission determines that it is applicable.

b. Potential Refunds

i. What costs, if any, should Spire be required to refund pursuant to the Missouri Western District Court of Appeals Opinion remanding Spire Missouri East's and West's 2016 and 2017 ISRS?

Because the competent and substantial evidence in this proceeding shows that there are no incremental costs associated with the retirement of the plastic facilities at issue, implementation of the Western District Court of Appeals Opinion requires that no refund or adjustment be made to the ISRS charges previously approved by the Commission. The Court of Appeals Opinion did not decide what costs, if any, resulted from the practice of retiring plastic facilities in those instances where it was less costly than reusing them, because the Commission's Report and Order did not cite it as a justification for its decision to permit the recovery of the Company's ISRS costs. Accordingly, the Commission is completely free to determine this issue in the manner it deems appropriate, subject only to the requirements for a valid Commission order and, in the case of historical costs incurred prior to the Company's last general rate cases, to the requirements of the ISRS statute for making adjustments to such costs. To that end, the Court of Appeals did reaffirm the basic principle that the Commission's orders must be based on competent and substantial evidence and not be arbitrary or capricious. Application of those principles to the facts of this case requires a finding by the Commission that no downward adjustment to the Company's ISRS is appropriate.

i. Factually, what is the amount of plastic components not in a worn out or in a deteriorated condition replaced for each ISRS period?

The Company has provided abundant information on materials replaced in its cast iron and

bare steel main replacement programs. However, no party has accurately quantified the amount of plastic that was replaced that was not in a worn out or deteriorated condition and because the Company has demonstrated that the retirement of such plastic facilities did not result in an incremental cost, such a quantification is not needed. Further, because the evidence clearly showed that there is no direct relationship between the amount of plastic retired and the cost of installation to replace it, such a quantification would not be useful in any case.

As previously noted, however, Company witness Glenn Buck has identified numerous errors in the quantifications provided by Staff and OPC. For example, all of the plastic components that were retired under blanket work orders clearly were worn out or deteriorated and none of those costs should have been excluded even on the theories advanced by Staff and OPC. This represents over 50% of Staff's disallowance. Secondly, because Spire Missouri provided the parties with information on the vintage of plastic that was retired, it can be determined which plastic components were at or near the end of the service lives for plastic services (44 year for East, 40 years for West), and could thus be considered to be worn out or in a deteriorated condition. Neither Staff nor OPC made adjustments for either of these exceptions. Other errors in the approach taken by Staff and OPC are set forth in Mr. Buck's direct testimony.[76]

d. Rate Design

ii. To the extent such ineligible costs exist, how should they be returned to ratepayers?

This is a moot point because there are no ineligible costs included in the Company's ISRS charges. Because of the work and planning of the Company's engineers and technical staff, customers have received the benefit of increased cast iron and bare steel replacement at a cost that is lower than if the Company had not retired but instead attempted to reuse plastic facilities.

[76] Ex. 6, pp. 3-9; Tr. 445;

II. 2018 Matters

a. Compliance

i. Is Spire's ISRS filing compliant with the ISRS statutes Sections 393.1009 through 393.1015?

For all the reasons previously discussed, Spire Missouri's ISRS filing is fully compliant with every provision of the ISRS statutes, Sections 393.1009 through 393.1015.

b. Potential Costs

i. What costs should Spire Missouri be permitted to collect through its 2018 ISRS filing?

For the reasons previously discussed, Spire Missouri should be permitted to collect all of the ISRS charges it filed for in its 2018 filings, subject only to true-up of its May and June ISRS plant estimates. This amount totals $12,094,979 total for Spire Missouri, consisting of $4,827,329 for Spire Missouri East, and $7,267,650 for Spire Missouri West.

c. Rate Design

i. How should Spire Missouri's 2018 ISRS rates be calculated?

Spire Missouri's 2018 ISRS rates should be calculated in compliance with the calculation methods set forth in the ISRS statute. Both Staff and the Company have utilized the rate design set forth in the ISRS statute and that rate design should be employed to calculate the Company's ISRS charges based on the ISRS revenues proposed by Staff as adjusted to eliminate Staff's exclusion of costs based on the retirement of plastic facilities.

C. CONCLUSION

The competent and substantial evidence in these cases clearly establishes that no disallowance, refund or adjustment of the Company's historical ISRS charges in the 2016 and 2017 ISRS cases or in its two current ISRS is either warranted or appropriate. The Company's method for assessing the impact of its plastic retirements on ISRS costs and charges is based on

multiple engineering analyses of the operational and economic realities that drive the incurrence of the costs reflected in those ISRS charges. These analyses, which have been presented in multiple proceedings without challenge as to their accuracy or validity, demonstrate that the retirement rather than reuse of plastic has reduced, not increased, its ISRS costs and related charges. In contrast, the methodology proposed by OPC and now Staff is based on an arbitrary set of unexplained and unreasonable assumptions that lack any support for cost causation. Moreover, it has, at one time or another, been criticized as inadequate and inappropriate not only by witnesses for the Company, but also by witnesses for OPC and Staff. The Commission should decline to adopt their methodology, and should deny OPC's motions to dismiss and approve the Company's ISRS request.

If adopted and implemented, such a methodology would effectively undermine the cost-effective and beneficial implementation of pipeline replacement programs that have reduced capital costs and provided numerous other safety and economic benefits for the Company's customers and the community. There is simply no economic, legal, policy or other basis that would justify such a counterproductive result.

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 Staff and the Office of the Public Counsel, on this 6th day of September 2018 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

/s/ Rick Zucker