

**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) **File No. GO-2016-0333**
Replacement Surcharge in its Laclede Gas)
Service Territory)

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

In the Matter of the Application of Laclede Gas)
Company to Change Its Infrastructure System) **File No. GO-2017-0202**
Replacement Surcharge in its Laclede Gas)
Service Territory)

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

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

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

STAFF'S BRIEF

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I. Introduction

On August 27, 2018, the Missouri Public Service Commission held an evidentiary hearing in the matter of the remanded cases, Case Nos. GO-2016-0332 and GO-2016-0333; the subsequent cases, Case Nos. GO-2017-0201 and GO-2017-0202; and the pending filings, Case Nos. GO-2018-0309 and GO-2018-0310 regarding the Spire Missouri East and West Infrastructure System Replacement Surcharge (ISRS).

An ISRS is statutorily authorized pursuant to Sections 393.1009, 393.1012, and 393.1015, RSMo. Section 393.1009 provides definitions for terms such as ISRS costs, outlines what constitutes a gas utility plant project, and details what types of gas utility plant projects qualify as eligible infrastructure system replacements. Additionally, Commission Rule 4 CSR 240-3.265 lays out the criteria for any petition filed with the Commission for an ISRS or any change to an ISRS.

The Office of the Public Counsel (OPC) appealed the Commission's decisions in the 2016 ISRS cases and the Western District of the Missouri Court of Appeals remanded the cases to the Commission for further proceedings consistent with the Opinion.¹ In the Opinion, the Western District reversed the Commission's Order to the extent that it allowed ISRS cost recovery "for the replacement of plastic components that were not in a worn out or deteriorated condition."² On remand, Staff believes that the Commission needs to decide what costs, if any, were recovered through ISRS charges for the replacement of plastic components that were not worn out or in deteriorated condition:

¹ *In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and in the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory; Public Service Commission v. The Office of Public Counsel*, Opinion filed: November 21, 2017, WD80544 (2017).

² *Id.* at 1-2.

Significant to this appeal *section 393.1009(5)(a)* sets forth the ISRS-eligibility requirements for replacement projects. Under that provision, cost recovery through an ISRS surcharge is available for "[m]ains, valves, service lines, regulator stations, vaults, and other pipeline system components installed *to comply with state or federal safety requirements* as replacements for existing facilities that have *worn out* or are in *deteriorated condition*[" § 393.1009(5)(a) (emphasis added).³

Staff, Spire Missouri, and OPC entered into a Stipulation and Agreement in Case Nos. GO-2017-0201 and GO-2017-0202, that states "if the courts make a final, non-appealable decision reversing the Commission's January 18 Order on the grounds that the Commission's decision on the Plastics Issue is unlawful or unreasonable, then the court's final decision shall be applied to the Current Cases in the same manner as it is applied to the Prior Cases, as applicable."⁴ The determination the Commission makes for the 2016 cases, should also be applied to the 2017 cases pursuant to that agreement.⁵

Spire Missouri has consistently held the position throughout these remand proceedings that the Western District opinion does not mandate a disallowance or adjustment relating to the replacement of plastic facilities.⁶ However, the Western District's opinion clearly states that it reversed the Commission's order to the extent that it allowed cost recovery through adjustment to the ISRS rate schedule for the replacement of plastic components that were not in a worn out or deteriorated

³ *PSC v. Office of Pub. Counsel (In re Laclede Gas Co.)*, 539 S.W.3d 835 (Mo. App. 2017).

⁴ *Stipulation and Agreement, In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory*, Case Nos. GO-2017-0201 and GO-2017-0202, Pp. 2-3.

⁵ *Id.*

⁶ *Spire Missouri Inc.'s Initial Brief on Remand* P. 3.

condition,⁷ and remanded the case for further proceedings consistent with its opinion.⁸ No party contests that plastic mains and service lines were replaced that were not worn out or deteriorated.⁹ Therefore, in order to issue an order consistent with the Western District's opinion, the Commission must exclude from Spire Missouri's ISRS applications any amounts relating to the replacement of ineligible plastic components.

Further, because Spire Missouri has maintained this position since the outset of the 2016 cases, the same arguments it makes now to this Commission are those that it made to the Western District on appeal of the 2016 proceedings.¹⁰ Spire Missouri's own witness, Mark Lauber, provided his testimony from the 2016 proceedings, which was included in the record that went before the Western District on appeal.¹¹ At the evidentiary hearing, Mr. Lauber acknowledged his testimony contained a discussion of the cost savings allegedly achieved through Spire Missouri's Neighborhood Replacement Plan.¹² The Western District clearly ordered the removal of amounts relating to the replacement of ineligible plastic components and offered no discussion of the economics of the program; the Court did not consider the economic argument to outweigh the legal one.

Staff has previously filed a Report and Reply Brief in this matter following the remand of the 2016 ISRS filings, which outline Staff's argument as to how

⁷ *In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and in the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory; Public Service Commission v. The Office of Public Counsel*, Opinion filed: November 21, 2017, WD80544 (2017), Pp. 1-2.

⁸ *Id.* at 8.

⁹ *Id.* at 5.

¹⁰ Tr. 339:9-15.

¹¹ *Lauber Direct*, Case Nos. GO-2016-0332; GO-2016-0333; GO-2017-0201; GO-2017-0202; GO-2018-0309; and GO-2018-0310.

¹² Tr. 404:1-22.

the 2016 and 2017 ISRS filings should be decided. To that end, Staff will be brief in this filing and provide a concise explanation of: 1) The costs associated with the replacement of ineligible plastic components collected through Spire Missouri's 2016 and 2017 ISRS; 2) The method of calculation of these ineligible replacement costs; and 3) How the calculated cost of the ineligible plastic which was replaced should be returned to the ratepayers. Staff will also discuss the costs of ineligible plastic components and the calculation of those costs included in Spire Missouri East's and West's pending 2018 ISRS filings.

II. Remanded Matters

a. Potential Costs

- i. 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?

The Western District in its Opinion stated that Section 393.1009(5)(a) clearly sets out two requirements for component replacements to be eligible for cost recovery under ISRS: 1) the replacement components must be installed to comply with state or federal safety requirements; and 2) the existing facilities being replaced must be worn out or in a deteriorated condition.¹³ Furthermore, it determined that trying to assign ISRS eligibility to plastic pipes that were not worn out or deteriorated by evaluating an entire neighborhood system as a singular unit was not supported by Section 393.1009(5)(a), regardless of whether Spire Missouri's replacement strategy incidentally improved safety.¹⁴ Therefore, any costs that do not meet the two guidelines

¹³ *In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and in the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory; Public Service Commission v. The Office of Public Counsel*, Opinion filed: November 21, 2017, WD80544 (2017), P. 5.

¹⁴ *Id.* at 5-6.

of the Western District are considered ineligible and to the extent that Spire Missouri collected those costs they must be tabulated.

Pursuant to Spire Missouri's Neighborhood Replacement Program, the company replaces cast iron and unprotected steel pipes for which there are government mandated requirements to conduct such replacements.¹⁵ This Commission has previously found that any cast iron or unprotected steel pipe is considered to be worn out and deteriorated.¹⁶ However, the Western District ruled that, "this effort to assign ISRS eligibility to plastic pipes that are not worn out or deteriorated by evaluating an entire neighborhood system as a singular unit finds no support in the plain language of section 393.1009(5)(a)."¹⁷ In addition, the Court stated that it did "not believe that section 393.1009(5)(a) allows ISRS eligibility to be bootstrapped to components that are not worn out or deteriorated simply because [they] are interspersed within the same neighborhood system of such components being replaced or because a gas utility is using the need to replace worn out or deteriorated components as an opportunity to redesign a system (i.e., by changing the depth of the components or system pressure) which necessitates the replacement of additional components."¹⁸ The key point to take away from the Western District's Opinion is that the costs of replacing plastic which is not worn out or deteriorated but is replaced through the Spire Missouri Neighborhood Replacement Program cannot be collected through the ISRS.¹⁹ The closest definition of worn out and deteriorated in the record of the 2016, 2017, and 2018 ISRS proceedings was Spire witness Glenn Buck's statement that it means a pipe is no longer in a safe

¹⁵ *Id.* at 4, footnote 2.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 5-6.

¹⁸ *Id.* at 6, footnote 5.

¹⁹ *Id.* at 7.

established condition to provide service.²⁰ However, Spire witness Mark Lauber stated in his testimony that the industry has no standard for the service life of plastic because at this time there is no indication that there will be any issues.²¹ Additionally, there is no federal or state required replacement program for the type of plastic pipe at issue in these matters.²² Finally, Spire witness Craig Hoeflerlin testified that Spire does not conduct any type of review to determine if replaced plastic components are worn out or deteriorated.²³ Therefore, it is reasonable to conclude that any plastic pipe which Spire Missouri replaced as a result of its Neighborhood Replacement Program was not ISRS eligible.

From the Western District's finding, Staff determined that the appropriate costs which were determined to be ineligible are those produced by first determining the feet of mains and service lines replaced by type of pipe, and then comparing the actual percentage of plastic footage replaced for mains and service lines compared to the total footage replaced for both mains and service lines.²⁴ For Spire West in Case No. GO-2016-0332 that amount is \$827,159; for Spire East in Case No. GO-2016-0333 that amount is \$2,283,628; for Spire West in Case No. GO-2017-0201 that amount is \$532,006; and for Spire East in Case No. GO-2017-0202 that amount is \$518,233.

-Whitney Payne

²⁰ Tr. 422:13-14.

²¹ Tr. 374-375:23-1.

²² Tr. 450:9-11.

²³ Tr. 369: 2-10.

²⁴ Ex. 101, *Bolin Direct*, Case Nos. GO-2016-0332; GO-2016-0333; GO-2017-0201; and GO-2017-0202, P. 4:1-8.

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?

In line with Staff's argument in the immediately preceding paragraph, the Commission should order Spire Missouri to refund all costs resulting from the calculation of the feet of mains and service lines replaced by type of pipe compared to the actual percentage of plastic footage replaced for mains and service lines compared to the total footage replaced for both mains and service lines.²⁵ Staff has deduced a proper methodology for performing this calculation, and provides its results below.

Blanket work orders should not receive a different treatment than the standard work order authorizations. Blanket work orders are the collection box of countless projects and retirements spanning sometimes several ISRS filings, and they contain little detail of the individual retirements that encompass those projects.²⁶ Staff was not even provided all of the applicable blanket work order authorizations for review of any of the ISRS filings at issue in this case so it is impossible for Staff to support any position but that the work orders should either be treated comparably to the work order authorizations Staff had the opportunity to review or they should be excluded from recovery entirely.²⁷

-Whitney Payne

c. Methodology

- i. What is the appropriate methodology for making this determination?

Using Staff's determination as outlined above of the exact type of costs which were ineligible for collection through Spire Missouri's ISRS, the appropriate

²⁵ *Id.* at 4:1-8.

²⁶ Tr. 446:10-12; 447:18-24.

²⁷ Tr. 445-446:22-1.

methodology to calculate those costs is to apply the actual individual plastic main and service line percentages to each work order authorization's overall cost to determine the cost of the replacement of plastic pipe.²⁸ This methodology was used to reach Staff's recommendation and was applied to all work order authorizations which Spire Missouri provided to Staff.²⁹ For any work order authorizations not provided to Staff, but which Staff had notice of from the original ISRS filings, Staff recommends, and used in its calculation, an average of the plastic mains and service lines replaced for the work order authorizations which were provided.³⁰ Staff applied the calculated average to any work order not provided; assuming that the work order authorizations not provided were comparable to those work order authorizations which were provided.³¹

Staff's methodology is the most accurate option presented and is the only method contemplated by the parties in the original proceedings of Spire Missouri's 2016 ISRS filings.³² Contrary to Spire Missouri's statements in testimony, Staff witness Kim Bolin testified at hearing that Staff's calculations did not contain errors relating to: relocations mandated by governmental authorities³³ or transferring or connecting service lines to a new main.³⁴ Staff also did not exclude any costs incurred to meet state

²⁸ Ex. 101, *Bolin Direct*, Case Nos. GO-2016-0332; GO-2016-0333; GO-2017-0201; and GO-2017-0202, P. 4:9-10.

²⁹ *Id.* at 4:6.

³⁰ *Id.* at 4:14-17.

³¹ *Id.* at 4:16-19.

³² *Staff Reply*, filed July 27, 2018, P. 6. *Citing* Tr. 101: 16-102:13, OPC Counsel Marc Poston questioning Spire witness Glenn Buck on the stand proposed a methodology where the percentage of plastic retirement in each work order was determined and then removed as a methodology for excluding "ineligible" ISRS costs; Tr. 172:1-22, OPC Counsel Marc Poston asked Staff witness Kim Bolin if a methodology would work where a percentage of plastic replaced was determined in a work order and then that same percentage was removed from the work order costs; Tr. 179:1-10, OPC Counsel Marc Poston questioning Staff witness Mark Oligschlaeger as to whether a percentage of pipe that's plastic in a work order could be determined and removed would be a method for determining the amount of "ineligible" plastic included in the ISRS.

³³ Tr. 444-445:25-1.

³⁴ Tr. 445:17-21.

or federal safety requirements so long as it was documented in the work order authorizations provided.³⁵ Spire Missouri has failed to propose an alternative methodology and OPC's proposed methodology is based on only a sampling of the relevant information contained in the bulk of four filings spanning approximately 12 months of data for each division.³⁶ From outward appearances what may seem to be gaps in Staff's methodology are generally attributable to a lack of detail in the work order authorizations of Spire Missouri, due to the prior belief that plastic components could be replaced and recovered through the companies' ISRS filings.³⁷ However, that does not change the fact that Spire Missouri East and West collected the costs of replacement of ineligible plastic components through their 2016 and 2017 ISRS filings which Staff would argue must be refunded in order to comply with the Western District's order.

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

Staff's methodology has produced calculations for each of Spire Missouri East's and West's four ISRS filings made for 2016 and 2017.³⁸ Staff applied its methodology, applying the actual individual plastic main and service line percentages to

³⁵ Ex. 101, *Bolin Direct*, Case Nos. GO-2016-0332; GO-2016-0333; GO-2017-0201; and GO-2017-0202, P. 4.

³⁶ *Verified Application and Petition of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory*, Case No. GO-2016-0332; *Verified Application and Petition of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory*, Case No. GO-2016-0333; *Verified Application and Petition of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory*, Case No. GO-2017-0201; *Verified Application and Petition of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory*, Case No. GO-2017-0202.

³⁷ Tr. 446:6-12.

³⁸ Ex. 101, *Bolin Direct*, Case Nos. GO-2016-0332; GO-2016-0333; GO-2017-0201; and GO-2017-0202, Schedule KKB-d6.

the work order cost to determine the cost of the replacement of plastic pipe.³⁹ For the 2016 ISRS filings, the over collections total \$2,283,628 for Spire Missouri East, and \$827,159 for Spire Missouri West; for the 2017 ISRS filings, they total \$518,233 for Spire Missouri East and for \$532,006 Spire Missouri West is.⁴⁰

-Whitney Payne

d. Rate Design

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

The amounts collected for replacement of ineligible plastic components in the 2016 and 2017 ISRS cases (\$2,801,860 for Spire Missouri East⁴¹ and \$1,359,165 for Spire Missouri West⁴²) should be returned to ratepayers as an offset to the current ISRS revenue requirements in Case Nos. GO-2018-0309 and GO-2018-0310.⁴³ Schedule DMS-d3 to Exhibit 103 and Schedule DMS-d3 to Exhibit 105 show the ISRS charges resulting from this approach.

Such an approach is consistent with the gas ISRS statute itself, Section 393.1015, RSMo, and the Commission's gas ISRS rule at 4 CSR 240-3.265. Refunding, or offsetting, past ISRS overcollections in a future ISRS is specifically addressed in at least three subsections – 5(2), 6(2), and 8 – of Section 393.1015. These subsections provide:

5. (2) At the end of each twelve-month calendar period the ISRS is in effect, the gas corporation shall reconcile the differences between the revenues resulting from an ISRS and the appropriate pretax revenues as

³⁹ *Id.* at 4.

⁴⁰ *Id.* at Schedule KKB-d8.

⁴¹ Ex. 108.

⁴² Ex. 109.

⁴³ Ex. 103, *Sommerer Direct*, Case No. GO-2018-0309, p. 3 lines 9-18 and Schedule DMS-d3; Ex. 105, *Sommerer Direct*, Case No. GO-2018-0310, p. 3 lines 12-21 and Schedule DMS-d3.

found by the commission for that period and shall submit the reconciliation and a proposed ISRS adjustment to the commission for approval to recover or refund the difference, as appropriate, through adjustments of an ISRS charge.

6. (2) Upon the inclusion in a gas corporation's base rates subject to subsections 8 and 9 of this section of eligible costs previously reflected in an ISRS, the gas corporation shall immediately thereafter reconcile any previously unreconciled ISRS revenues as necessary to ensure that revenues resulting from the ISRS match as closely as possible the appropriate pretax revenues as found by the commission for that period.

8. Commission approval of a petition, and any associated rate schedules, to establish or change an ISRS pursuant to the provisions of sections 393.1009 to 393.1015 shall in no way be binding upon the commission in determining the ratemaking treatment to be applied to eligible infrastructure system replacements during a subsequent general rate proceeding when the commission may undertake to review the prudence of such costs. In the event the commission disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible infrastructure system replacements previously included in an ISRS, the gas corporation shall offset its ISRS in the future as necessary to recognize and account for any such overcollections.

It should also be noted that subsection 6(2) above specifically contemplates a reconciliation after inclusion in base rates of costs previously reflected in an ISRS.

If the Commission determines that offsetting the current ISRS revenue requirements in Case Nos. GO-2018-0309 and GO-2018-0310 pursuant to Section 393.1015, RSMo, is not the appropriate method for returning to ratepayers the amounts Spire Missouri previously collected through the ISRS for replacement of ineligible plastic components, Section 386.520, RSMo, subsections 2(1) and 2(2), which was raised by the Commission at the hearing on August 27, 2018, provides specific statutory authority for the Commission to provide rate adjustments pursuant to another method as specified therein.

Commission Questions at August 27, 2018 Hearing

At the hearing on August 27, 2018, the Commission and RLJ asked that a few specific items be addressed in the parties' briefs. One of those questions was whether the Commission has statutory authority to order refunds from the 2016 and 2017 ISRS cases. As discussed in more detail above, Staff submits that the Commission has such authority under both Section 393.1015, RSMo, and Section 386.520, RSMo. Although only the 2016 ISRS cases were the subject of the court appeal (and therefore, arguably, only the 2016 cases would be subject to Section 386.520, RSMo), the unanimous stipulation and agreement from the 2017 cases provided in paragraph 5(b)⁴⁴ that "If the courts make a final, non-appealable decision reversing the Commission's January 18 Order [in the 2016 cases] on the grounds that the Commission's decision on the Plastics Issue is unlawful or unreasonable, then the court's final decision shall be applied to the Current Cases [the 2017 cases] in the same manner as it is applied to the Prior Cases [the 2016 cases], as applicable. In such event, upon remand, any one or more Signatories may request that the Commission determine the amount of refund, if any, that shall be made in both the Prior Cases and the Current Cases as a result of such reversal." Therefore, the Commission has authority to order refunds for both the 2016 and 2017 ISRS cases.

At the hearing on August 27, 2018, the Commission and RLJ also asked whether the Missouri Supreme Court's opinion in *Matter of Missouri-American Water Company v. Office of the Public Counsel*, 516 S.W.3d 823 (2017) ("MAWC"), rendered moot the issue of returning the amounts collected for replacement of ineligible plastic

⁴⁴ Additionally, the immediately preceding paragraph, paragraph 5(a), referenced the then-pending Spire Missouri rate cases (GR-2017-0215 and GR-2017-0216).

components in the 2016 and 2017 ISRS cases, given that Spire Missouri has had a general rate case since the original litigation of the 2016 ISRS cases. Staff submits that the MAWC case can be distinguished from the instant cases and does not moot this issue.

It should first be noted that in the MAWC case the court was dealing with the ISRS statutes applicable to water corporations, found at Section 393.1000, RSMo, through Section 393.1006, RSMo, rather than the ISRS statutes applicable to gas corporations, found at Section 393.1009, RSMo, through Section 393.1015, RSMo. Furthermore, the water ISRS statutes and the gas ISRS statutes are not identical. The court's interpretation of the water ISRS statutes should not be considered binding in a gas ISRS case.

However, even if the court's interpretation is considered instructional in interpreting the gas ISRS statutes, the MAWC opinion is distinguishable from the instant cases. The MAWC case involved OPC's challenge to the propriety of the ISRS itself, *i.e.*, whether MAWC met the statutory requirements⁴⁵ to even have an ISRS, rather than a challenge to the eligibility of certain costs for recovery through an ISRS as in the instant cases. For example, the court stated "This appeal involves only Public Counsel's challenge *to the [ISRS] surcharge*"⁴⁶ (emphasis added) and "the issue raised on this appeal as to *whether MAWC can utilize the surcharge provisions of section 393.1003* is moot."⁴⁷ (emphasis added) Therefore, the issue of whether the Commission can order a refund of amounts collected for replacement of ineligible

⁴⁵ Unlike the gas ISRS statutes, the water ISRS statutes contain a population requirement.

⁴⁶ ***Matter of Missouri-American Water Company v. Office of the Public Counsel***, 516 S.W.3d 823 at 828 (2017).

⁴⁷ *Id.* at 830.

plastic components in the 2016 and 2017 ISRS cases is a separate issue from that which was addressed in the MAWC case – whether MAWC, or in the instant cases Spire Missouri, meets the requirements for having an ISRS at all.

Furthermore, in the MAWC case the court found the issue was moot because the base rates from the intervening rate case had superseded the ISRS.⁴⁸ However, the base rate tariffs (those tariffs resulting from the recent rate cases) of both Spire Missouri East and Spire Missouri West specifically state that they are “*subject to* the Infrastructure System Replacement Surcharge (ISRS).”⁴⁹ (emphasis added) If the base rate tariffs are “subject to” the ISRS the ISRS cannot be “superseded by” the base rate tariffs. This further supports the distinction addressed in the preceding paragraph – that the MAWC case involved the propriety of the ISRS itself, whereas the instant cases involve the eligibility or ineligibility of costs included in an ISRS.

In addition, if the Commission cannot order the return of the amounts collected for replacement of ineligible plastic components in the 2016 and 2017 ISRS cases because the MAWC case and intervening Spire Missouri rate cases render the issue moot, the reconciliation procedure specifically set forth in the ISRS statutes at Section 393.1015.5(2) and 6(2), RSMo, quoted above, is also rendered moot and the Commission could not order adjustments due to past ISRS overcollections or undercollections any time there is an intervening general rate case. In the present circumstance, this means that in the 2018 ISRS cases (Case Nos. GO-2018-0309 and GO-2018-0310) the reconciliations required by statute become moot and the

⁴⁸ *Id.* at 828.

⁴⁹ See, e.g., P.S.C. MO. No. 7 Original Sheet No. 2, Residential Gas Service base rate sheet for Spire Missouri East; P.S.C. MO. No. 8 Original Sheet No. 2, Residential Gas Service base rate sheet for Spire Missouri West. The other base rate tariff sheets contain similar language.

Commission cannot include the ISRS revenue reconciliation as an offset to the ISRS rates although *even Spire Missouri included the reconciliation amounts in its applications and does not contest that it should be included as an offset.* As reflected on Exhibits 108 and 109, for Spire Missouri East this means ignoring an overcollection in the amount of \$2,717,537,⁵⁰ and for Spire Missouri West it means ignoring an overcollection in the amount of \$1,834,513⁵¹ -- despite the fact that these reconciliations are required by statute and that even Spire Missouri included these amounts as overcollections in its calculations.⁵² Such a result cannot be what was intended by the court in the MAWC opinion.

Finally, at the hearing on August 27, 2018, at least one of the counsel⁵³ for Spire Missouri agreed with Staff on this issue. The following exchange⁵⁴ occurred at the hearing between Chairman Hall and Mr. Zucker:

CHAIRMAN HALL: Do you think the Commission has the statutory authority to order a refund?

MR. ZUCKER: Well, the ISRS law determines how credits are to be handled. And I think Staff had the right answer: If there is money to be refunded, it should come off of the next ISRS.

CHAIRMAN HALL: But ISRS was reset to zero in the last rate case.

MR. ZUCKER: Right.

CHAIRMAN HALL: So how – what is our statutory authority to order a refund in those cases? I understand how we could do it in the pending – in the 2018 cases. I just don't understand how we could do it in the cases where the ISRS has been reset to zero.

⁵⁰ Ex. 108.

⁵¹ Ex. 109.

⁵² Ex. 108 and Ex. 109.

⁵³ Spire Missouri's other counsel stated he thought it was a fair point to wonder how a refund or credit would be done. Tr. p. 345. In other words, Spire Missouri's counsel disagreed with each other.

⁵⁴ Tr. p. 344.

MR. ZUCKER: Okay. The ISRS was reset to zero and we're currently collecting costs for those expenses, but before it was reset to zero, we collected ISRS charges on those original cases. And so that is what is at issue and that would be the amount that would be offset from the current ISRS cases, if in fact we had additional costs.

As clearly stated by Mr. Zucker, "Staff had the right answer." And that answer is: the amounts collected for replacement of ineligible plastic components in the 2016 and 2017 ISRS cases (\$2,801,860 for Spire Missouri East⁵⁵ and \$1,359,165 for Spire Missouri West⁵⁶) should be returned to ratepayers using the methodology contemplated in the statutes as an offset to the current ISRS revenue requirements in Case Nos. GO-2018-0309 and GO-2018-0310.⁵⁷

-Jeff Keevil

III. 2018 Matters

a. Compliance

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

Other than in regard to the issue of replacement cost for plastic components not in a worn out or deteriorated condition and related calculations, Staff is not challenging the ISRS filings' compliance with the statutes in this case.

-Jeff Keevil

b. Potential Costs

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

Staff's late-filed exhibits filed August 29, 2018, clarifies exactly what costs Staff recommends Spire Missouri should recover for its East and West divisions based on the

⁵⁵ Ex. 108.

⁵⁶ Ex. 109.

⁵⁷ Ex. 103, *Sommerer Direct*, Case No. GO-2018-0309, p. 3 lines 9-18 and Schedule DMS-d3; Ex. 105, *Sommerer Direct*, Case No. GO-2018-0310, p. 3 lines 12-21 and Schedule DMS-d3.

Commission's determination of whether plastic components must be disallowed or permitted for recovery.⁵⁸ The exhibits feature a breakdown of the revenue requirement that supports Spire Missouri's position, which includes all plastic, compared to Staff's position, which excludes all plastic.⁵⁹ Staff recommends the Commission issue an order which excludes all plastic from the amount Spire Missouri is permitted to recover. This determination is the only proper method for complying with the Western District's order.

Issuing an order based on Staff's position as applied in the 2018 cases, without including refunds of the over collected amounts from the 2016 and 2017 ISRS cases, would result in Spire Missouri East collecting \$2,607,610 and Spire Missouri West collecting \$5,411,793.⁶⁰ Should the Commission agree with Staff that refunding the over collected amounts from the 2016 and 2017 ISRS cases by offsetting those amounts against the 2018 ISRS filing is proper, Spire Missouri West would collect \$4,052,628 and Spire Missouri East should be ordered to refund \$194,250.⁶¹

-Whitney Payne

c. Rate Design

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

The ISRS rates should be calculated based upon the most recent rate case billing units and further allocated using the traditional ISRS rate design that is predicated on current customer charges.⁶² Staff's proposed rate design and rates are consistent with the methodology used to establish Spire Missouri's past ISRS rates;

⁵⁸ Exhibits 108 and 109.

⁵⁹ *Id.*

⁶⁰ Exs. 108 and 109; Ex. 104, *Arabian Direct*, Case No. GO-2018-0310, Schedule AA-d2; Ex. 105, *Sommerer Direct*, Case No. GO-2018-0310, Schedule DMS-d3; Ex. 102, *Newkirk Direct*, Case No. GO-2018-0309, Schedule CN-d2; Ex. 103, *Sommerer Direct*, Case No. GO-2018-0309, Schedule DMS-d3.

⁶¹ *Id.*

⁶² Ex. 103, *Sommerer Direct*, Case No. GO-2018-0309, p. 2 line 13 through p. 3 line 18; Ex. 105, *Sommerer Direct*, Case No. GO-2018-0310, p. 2 line 13 through p. 3 line 21.

consistent with the overall methodology used to establish ISRS rates for other Missouri natural gas utilities which have an ISRS; and consistent with the applicable ISRS statute.⁶³ See Exhibit 103 Schedule DMS-d3 and Exhibit 105 Schedule DMS-d3 for the specific rate calculations for Spire Missouri East and Spire Missouri West respectively. Although there is obviously a disagreement among the parties as to the calculation of the proper ISRS revenue requirement for both the GO-2018-0309 and GO-2018-0310 cases as addressed elsewhere in this brief, to Staff's knowledge no party contests Staff's rate calculation methodology.

-Jeff Keevil

IV. Conclusion

Staff's methodology and calculations are the most appropriate and Staff recommends the Commission issue its order reflecting these proposals, accordingly. OPC's calculations are less accurate and Spire Missouri failed to provide any type of methodology or calculation of replacement costs for ineligible plastic components.⁶⁴ Therefore, Staff recommends the Commission order Spire Missouri to refund the costs of the replacement of plastic components for its 2016 and 2017 ISRS filings, as they amount to improper overcollections, and should apply those costs to offset the current amounts Spire Missouri is permitted to recover through its 2018 ISRS filings after excluding the replacement of plastic components in those filings.

⁶³ Ex. 103, *Sommerer Direct*, Case No. GO-2018-0309 p. 2 lines 13-20; Ex. 105, *Sommerer Direct*, Case No. GO-2018-0310, p. 2 lines 13-20; Section 393.1015.5(1) RSMo.

⁶⁴ Tr. 430:1-25.

WHEREFORE Staff prays that the Commission will accept the above and will find in its favor on each of the issues contained herein; and grant such other and further relief as it finds appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 6th day of September, 2018, to all counsel of record.

/s/ Whitney Payne