

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Spire Missouri Inc.'s) d/b/a Spire Request for Authority to) Implement a General Rate Increase for) Natural Gas Service Provided in the) Company's Missouri Service Areas)	Case No. GR-2021-0108
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SECOND APPLICATION FOR REHEARING OR RECONSIDERATION

COMES NOW the Office of the Public Counsel (“OPC”) and for its *Second Application for Rehearing or Reconsideration* of the Missouri Public Service Commission’s (“the Commission”) November 12, 2021, *Amended Report and Order* in the above styled case, states as follows:

Pursuant to RSMo. section 386.500, the OPC seeks rehearing or reconsideration of the Commission’s *Amended Report and Order* because the order is unlawful, unjust, and/or unreasonable for the reasons laid out herein.

The Commission erred in its analysis of incentive compensation in that its decision is directly contradicted by the Commission’s own findings of fact

The OPC respectfully thanks the Commission for the clear degree of effort and thought shown by the amendments found in the November 12, 2021 *Amended Report and Order* addressing the concerns raised in the OPC’s initial *Application for Rehearing or Reconsideration*. However, the Commission’s decision on this point remains in error, as demonstrated by its own findings of fact. For all subsequent years beyond the initial year rates go into effect, the Commission’s decision will result in

double recovery by Spire. The OPC thus continues to request the Commission either reconsider its decision or grant a rehearing on this issue.

Before explaining the nature of the error, there are three points that the OPC wishes to make clear. First, the only portion of Spire Missouri's Annual Incentive Plans ("AIP") that the OPC is disputing are the "two new AIP business unit performance metrics – utility contribution margin, and utility adjusted operations and maintenance (O&M) per customer" – that Spire implemented in 2018. *Amended Report and Order*, pg. 34 ¶ 90. The OPC does not seek modification of the Commission's order as it pertains to any portion of the AIP other than the exclusion of cost related to these two new AIP business unit performance metrics.

Second, the OPC wishes to note that the error in the Commission's decision is demonstrated by the Commission's own findings of fact and basic principles of utility ratemaking. The OPC is not relying on the testimony of its own witnesses to any extent whatsoever. Therefore, the Commission's finding that "the testimony of Staff to be more credible than that of OPC" with regard to the issue of double recovery is irrelevant. *See Id.* at pg. 39. Again, the establishment of double recovery is effectively proven by the Commission's own findings of fact.

Third, the Commission needs to recognize that the issue in question here is the inclusion of incentive compensation bonus costs in Spire's **annual** revenue requirement. *Id.* at ¶ 92 ("These savings, therefore, will be reflected in Spire Missouri's cost of service approved by the Commission in this case **and will be built into the approved general rates.**" (emphasis added)); *Id.* at pg. 12 ¶ J ("What

annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts.” (emphasis added) (quoting *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 692 – 93 (1923))). Because the costs are presently being included in the **annual** revenue requirement, Spire’s rates will be set to permit Spire to recover these costs (*i.e.* bonus payments) **each year** going forward until new rates are established. *Webster’s Third New International Dictionary* (1976) (“Annual: 2: occurring, appearing, made, done, or acted upon every year or once a year”). This basic concept of utility ratemaking is of immense importance to this issue.

Again, the inclusion of AIP costs in Spire’s annual revenue requirement will result in rates being set that allow for the **full** recovery of those costs (*i.e.* bonus payments) each subsequent year, **on the expectation that those same expenses will be incurred in full each year**. This is no different from how any other type of expense included in rates is calculated or considered. For example, lease expense, the PSC assessment, depreciation expense, and even taxes are included in the annual revenue requirement on the presumption that those costs will be incurred every year. As will be shortly demonstrated, it is this basic concept that underlies the error in the Commission’s decision.

The central issue with the Commission’s decision can be found in its analysis of the OPC’s argument regarding double recovery:

OPC argues that incentive compensation bonus expense is recovered by Spire Missouri (or any utility) twice. The first recovery is in rates. The

alleged second recovery is in future periods between rate cases. However, OPC does not seem to recognize that the monetary benefits for which the bonuses are paid have already been included in Spire Missouri's cost of service.

Amended Report and Order. Pgs. 39 – 40. The key here is obviously the sentence “However, OPC does not seem to recognize that the monetary benefits for which the bonuses are paid have already been included in Spire Missouri's cost of service.” To be clear, the OPC **does** understand that the monetary benefits that were realized **in the 2020 test year** have been included in Spire's cost of service. The OPC's argument is premised on the fact that the monetary benefits **arising each year after 2020** have not been included in Spire Missouri's cost of service yet the cost to pay the incentive compensation bonuses for those benefits **has been** included in Spire's rates. This is the problem with the Commission's Amended Report and Order.

By including the AIP bonus expense in Spire's **annual** rates, the Commission is permitting Spire to recover the cost of paying the AIP bonuses **every year** moving forward until new rates are set. There are fundamentally two means to justify including in rates the cost to pay AIP bonuses every year moving forward: (1) to fund AIP bonuses for the monetary benefits realized during the 2020 test year, or (2) to fund AIP bonuses for **new** monetary benefits realized **after** the 2020 test year. The first of these two options cannot be correct. This is because “[i]ncentive payments are paid out **once** and an employee has to generate new savings in order to get another further incentive payment in a future year.” *Amended Report and Order*, at pg. 36 ¶ 97 (emphasis added). However, the Commission also found that “Staff reviewed Spire Missouri's AIP in effect **during the test year** where bonuses were paid out **during**

the rate case true-up period.” *Id.* at ¶ 99 (emphasis added). If the incentive payments (*i.e.* bonuses) given for monetary benefits achieved **during the test year** (*i.e.* 2020) were paid out **during the rate case true-up period** (*i.e.* 2021) **and** those incentive payments are only paid out **once**, then the incentive compensation bonus costs to be collected from customers and paid out every year **after** 2021 (*i.e.* after the rate case true-up period) cannot **possibly** be related to the monetary benefits realized **during** the test year.

The correct answer to the question posed is that the costs Staff (and now the Commission) have included in rates to pay AIP bonuses **on an annual basis** are meant to fund AIP bonuses for **new** monetary benefits realized **after** the 2020 test year. The Commission should already know this because it found that “[t]he AIP corresponds to Spire Missouri’s fiscal year with bonuses paid out to employees **after the end of the fiscal year** for performance goals reached **during the fiscal year.**” *Id.* at ¶ 98 (emphasis added). Based on this, it should be obvious that the incentive compensation bonuses paid out after 2021 must correspond to the performance goals reached during the immediately preceding fiscal year and **not** the 2020 test year. So, for example, incentive compensation bonuses paid out in 2022 reflect benefits achieved in 2021; incentive compensation bonuses paid out in 2023 reflect benefits achieved in 2022; incentive compensation bonuses paid out in 2024 reflect benefits achieved in 2023; and so on.¹

¹ Incidentally, this is the point that the OPC was attempting to make with regard to the testimony of Staff witness Juliette. The Commission apparently disagreed with the OPC’s argument. *Amended Report and Order*, pg. 40 (“The Commission disagrees with OPC’s argument that a conflict exists in Mr. Juliette’s testimony.”). This does not matter, however, as the OPC has shown how the critical point

The next step in the analysis is to ask the simple but important question: are the monetary benefits arising from the 2021 AIP or any subsequent year included in Staff's cost of service? Again, the Commission has already given the correct answer: no. *Id.* at pg. 37 ¶ 106 ("The benefits and costs of the 2021 AIP are not included in the cost of service."). Because the monetary benefits realized in 2021 and each subsequent year have **not** been included in Staff's cost of service, they have **not** been included in rates. Because the monetary benefits realized in 2021 and each subsequent year have **not** been included in rates, those monetary benefits realized in 2021 and each subsequent year will flow through to Spire's bottom line and Spire will simply keep that revenue:

Q. By incentivizing employees to reduce expenses or increase revenues, does Spire's bottom line increase, which benefits its shareholders?

A. **Yes, reducing expenses and increasing revenues would increase Spire's bottom line.**

Exhibit 131, *Surrebuttal Testimony of Jeremy Juliette*, pg. 10 lns. 8 – 11.

Q. Okay. So **in your surrebuttal testimony you acknowledge the fact that the Company is going to increase its bottom line in between rate cases because of the incentive plan.** Do you agree with that?

A. **Yes.**

Q. Would you qualify that increase to bottom line as regulatory lag?

(that the Commission has included in Spire's rates incentive compensation payments for monetary benefits that occurred **after** the test year) can be shown by relying on just the Commission's own findings.

A. As my surrebuttal stated, if the Company recognizes revenues greater than what is built into rates, then yes, they would get to keep that in between rate cases.

Tr. pg. 560 ln. 22- pg. 561 ln. 12 (Cross examination of Jeremy Juliette) (emphasis added). No party has sought to dispute this point, there is no evidence in the record to dispute this point, and the Commission itself has found this witness credible. *Amended Report and Order*, pg. 39 (“the Commission finds the testimony of Staff to be more credible than that of OPC.”). Moreover, because Spire will retain the monetary benefits realized in 2021 and each subsequent year **and** collect from ratepayers the incentive compensation bonus expense to be paid out in 2022 and each subsequent year **for those same monetary benefits**, the utility will recover these costs twice.

Visual Example

In order to ensure that this point is understood, the OPC offers the following illustrative example. For the purpose of this illustration, the OPC will use a simple hypothetical AIP program so that real numbers may be considered. Assume a hypothetical AIP program that just paid to an employee a bonus equal to 1% of whatever increased revenue that employee was able to generate for Spire. For the sake of this example, we will assume that a Spire employee was able to increase revenue by \$100,000 during the 2020 test year for this case. Under this AIP program, the employee would be eligible for a bonus of \$1,000, which would be paid out in 2021 true-up period. *Amended Report and Order*, pg. 36 ¶ 99 (“Staff reviewed Spire Missouri’s AIP in effect during the test year where bonuses were paid out during the rate case true-up period.”). Let us further assume that Spire’s new rates will go into

effect on January 1, 2022. Based on these assumptions, we can graphically illustrate a timeline of events:

	2020	2021	2022	2023	2024	<i>Etc.</i>
Cost of bonus recovered in general rates			\$1,000	\$1,000	\$1,000	\$1,000
Bonus paid out		\$1,000				
Monetary benefit achieved	\$100,000					
	Test Year	True-up period	Rates in effect	Rates in effect	Rates in effect	Rates in effect

Please note that the \$1,000 included in the “Cost of bonus recovered in general rates” row is consistent for years 2022, 2023, 2024, *etc.* Again, this is because Staff would have included the \$1,000 in incentive compensation expense in its cost of service report to represent the compensation expense to be paid in 2021. *Id.* at ¶ 93 (“Staff’s cost of service report includes a level of incentive compensation expense representative of Spire Missouri’s incentive compensation expense for the year following this rate case.”). Those costs would (if the Commission approves them as it has done so in this case) be built into the approved general rates to be recovered by Spire every single year. *Id.* at ¶ 92 (“These savings, therefore, will be reflected in Spire Missouri’s cost of service approved by the Commission in this case and will be built into the approved general rates.”). Hopefully, the Commission can already see the problem, but let us continue nonetheless.

As was previously discussed, there are effectively only two justifications for the table to look this way. Either the \$1,000 in bonus costs being recovered in general rates each year are to cover the cost of the bonuses paid out in 2021 for the benefits

achieved in 2020 (which is wrong) or they are meant to cover the cost of **new** monetary benefits incurred **after** the 2020 test year. Because only the second option is possibly reasonable, we can update the table to include the “assumed” monetary benefits and bonus payouts that justify the Commission’s decision to include the incentive compensation costs in annual rates:

	2020	2021	2022	2023	2024	Etc.
Cost of bonus recovered in general rates			\$1,000	\$1,000	\$1,000	\$1,000
Bonus paid out		\$1,000	Assumed \$1,000	Assumed \$1,000	Assumed \$1,000	Assumed \$1,000
Monetary benefit achieved	\$100,000	Assumed \$100,000	Assumed \$100,000	Assumed \$100,000	Assumed \$100,000	Assumed \$100,000
	Test Year	True-up period	Rates in effect	Rates in effect	Rates in effect	Rates in effect

The thing that should be immensely obvious here is simply this: it is absolutely not true that “the monetary benefits for which the bonuses are paid have already been included in Spire Missouri’s cost of service.” *Amended Report and Order*, pgs 39 – 40. Only the monetary benefits achieved **during the 2020 test year** are include in Spire cost of service while the monetary benefits achieved in 2021, 2022, 2023 and so on are not included in the test year and hence are not included in the cost of service. *Id.* at pg. 37 ¶ 106 (“The benefits and costs of the 2021 AIP are not included in the cost of service.”). Yet, because the cost of the **bonuses paid out in 2021** were included in the cost of service and thus general rates, the same amount will be collected each year to pay for a **new** bonus based on a **new** monetary benefit achieved. Thus, there **are**

“monetary benefits for which the bonuses are paid” that have clearly **not** “already been included in Spire Missouri’s cost of service.” The Commission’s decision is therefore clearly wrong.

The only possible way to avoid assuming that there will be new monetary benefits each year after the test year, yet still justify the inclusion of incentive compensation bonus costs in rates, is to assume that bonuses are being paid each year in relation to the monetary benefits achieved in 2020. As has been stated multiple times, this cannot possibly be right because the Commission correctly found that “[i]ncentive payments are paid out **once** and an employee has to generate new savings in order to get another further incentive payment in a future year” and the benefits achieved in 2020 are covered by the bonuses paid in 2021. *Amended Report and Order*, at pg. 36 ¶ 97 (emphasis added), ¶ 99 (“Staff reviewed Spire Missouri’s AIP in effect during the test year **where bonuses were paid out during the rate case true-up period.**”). Thus, it is only logically possible to justify the inclusion of incentive compensation bonus costs in rates if the Commission assumes there are **new** “monetary benefits for which the bonuses are paid” that will be generated **annually** and that these **new** benefits have not “already been included in Spire Missouri’s cost of service[,]” which directly contradicts its own decision. *Amended Report and Order*, pgs 39 – 40.

Logical Proof

The Commission is incorrect when it states, “the monetary benefits for which the bonuses are paid have already been included in Spire Missouri’s cost of service.”

Amended Report and Order, pgs 39 – 40. This can be demonstrated by applying simple logic to the Commissions own findings:

1. “Staff’s cost of service report includes a level of incentive compensation expense representative of Spire Missouri’s incentive compensation expense for the year following this rate case.” *Amended Report and Order*, pg. 35 ¶ 93.
2. Costs included in Staff’s cost of service report that are approved by the Commission will be built into the approved general rates. *Id.* at ¶ 92 (“These savings, therefore, will be reflected in Spire Missouri’s cost of service approved by the Commission in this case and will be built into the approved general rates.”).
3. The Commission sets Spire’s rates on an annual basis, meaning that the rates are to be collected each year. *Id.* at pg. 12 ¶ J (“What **annual** rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts.” (emphasis added) (quoting *Bluefield Water Works & Improvement Co. v. Public Service Commission of the State of West Virginia*, 262 U.S. 679, 692 – 93 (1923))); *Webster’s Third New International Dictionary* (1976) (Annual: 2: occurring, appearing, made, done, or acted upon every year or once a year).
4. If the Commission approves the level of incentive compensation expense currently included in Staff’s case, then that expense will be included in rates

and collected from ratepayers every year until a new rate case occurs. Points 1 – 3.

5. “Incentive payments are paid out **once** and an employee has to generate new savings in order to get another further incentive payment in a future year.” *Amended Report and Order*, pg. 36 ¶ 97 (emphasis added).
6. In order to justify including incentive compensation expense (to cover incentive payments) in rates to be collected each year when incentive payments are only paid out **once** per savings (*i.e.* monetary benefits) generated, the employees of Spire must be generate **new** savings (*i.e.* monetary benefits) each year (*i.e.* annually). Points 4 – 5.
7. If Spire employees need to generate **new** monetary benefits **annually** to justify the incentive compensation expense (to cover incentive payments, *i.e.* bonuses) being included for recovery in **annual** rates, then the AIP program must be generating **new** monetary benefits each year. Point 6 restated.
8. If the AIP program is generating **new** monetary benefits each year to justify the payment of bonuses included for recovery in annual rates, then **some** of those same monetary benefits “for which the bonuses are paid” must be occurring **after** the end of the test year period. Point 7.
9. If these new monetary benefits “for which the bonuses are paid” occurred **after** the end of the test year, then they have not been included **in** the test year and have thus not been included in the cost of service. *See Amended Report and*

Order, pg. 37 ¶ 106 (“The benefits and costs of the 2021 AIP are not included in the cost of service.”).

10. Therefore, there are some monetary benefits “for which the bonuses are paid” that are **not** “included in Spire Missouri’s cost of service.” Point 9; *Amended Report and Order*, pg. 37 ¶ 106 (“The benefits and costs of the 2021 AIP are not included in the cost of service.”).

11. Consequently, the Commission’s finding that “the monetary benefits for which the bonuses are paid have already been included in Spire Missouri’s cost of service” is clearly and unequivocally wrong.

Again, there is no questions of evidence here, no issue of credibility. It is merely a matter of walking through and applying what the Commission itself has said that demonstrates why the Commission is wrong.

A point conceded

Throughout this discussion, the OPC has readily conceded one point. The monetary benefits realized in Spire fiscal year 2020 are included in the test year. On that basis, the OPC further **agrees** with the Commission’s decision to permit cost recovery of the bonuses that will be paid out to Spire employees during the true-up period for the monetary benefits realized **in the 2020 test year**. The problem, as the OPC has struggled at length to explain, is that the Commission is including the incentive compensation in Spire’s **annual** rates. This means that the Commission is not just compensating Spire for the bonuses that will be paid out to Spire employees for the monetary benefits realized in the 2020 test year, but is also compensating

Spire for the bonuses that will be paid out for the monetary benefits realized in 2021, 2022, 2023, and so forth until Spire initiates a new rate case. It is permitting Spire to recover in rates the cost of incentive compensation bonuses paid to secure these monetary benefits realized in these subsequent years that results in the double recovery of the incentive compensation bonus expense because Spire will also be able to retain the monetary benefits achieved in those subsequent years as a straight additions to its bottom line. Tr. pg. 560 ln. 22- pg. 561 ln. 12 (Cross examination of Jeremy Juliette). However, the OPC did also just concede that Spire should be able to recover the cost of the bonuses that will be paid out to Spire employees for the monetary benefits realized during the test year.² The question should therefore be how to allow Spire to recover those costs without creating the double recovery problem that will occur for the monetary benefits realized in the *subsequent* years. The answer to that problem is surprisingly simple.

In order to allow Spire to recoup the cost of the bonuses paid out to employees for monetary benefits included in the test year without treating them as an annual cost and including them in rates, one simply needs to treat those bonus payments as a non-reoccurring cost (*i.e.* an abnormal or atypical cost). After that, it is easy to apply a normalization adjustment to allow Spire to recover just the bonus payments paid for the monetary benefits in the test year. *See Amended Report and Order*, pg.10 ¶¶ 12 – 13. For example, the Commission could assume that Spire will return for a new

² Moreover, the Commission has determined it would be a violation of the matching principle not to permit this. *Amended Report and Order*, pg. 39 (“To not include the bonus expense paid out to employees during the true-up period that led to the benefits would be contrary to the matching principle.”).

rate case in approximately three years (due to the ISRS statute requirements) and thus make a normalization adjustment to allow Spire to recover 33% (1/3) of the cost of the bonuses paid for the monetary benefits in the test year annually (after adjusting for carrying costs). That would allow the Company to fully recover the cost of the bonuses paid for monetary benefits included in the test year over the next three years **without** including an annual expense in Spire's rates that will otherwise result in double recovery.

Conclusion

The inclusion of incentive compensation expense in Spire's rates to be recovered from ratepayers annually will result in double recovery in each year after the first year. This is because only the monetary benefits realized in the test year are included in rates currently, while those monetary benefits occurring beyond the test year will result in an increase to Spire's bottom line that the Company will be permitted to retain even while the Company recovers from ratepayers the cost of the bonuses paid to achieve those monetary benefits. If the Commission wishes to permit Spire to recover the cost of bonuses paid during the true-up period related to monetary benefits realized during the test year, the Commission should order a normalization adjustment of those costs and not include them as an ongoing expense in annual rates. It is manifestly unfair to require Spire's customers to pay for a program that the Company will receive more than adequate compensation for in the form of positive regulatory lag. The OPC therefore asks the Commission to either

reconsider its position on this issue or hold a new hearing dedicated specifically to this issue.

The Commission has erred because it unlawfully and unreasonably shifted the burden of proof from Spire to the OPC with regard to the affiliate transactions issue

The argument presented herein remains principally unchanged from the OPC's initial *Application for Rehearing or Reconsideration*.

The Commission's conclusion of law correctly states that "[t]ransactions between Spire Missouri and Spire Inc. are subject to the Commission's affiliate transaction rule, 20 CSR 4240-40.015." *Report and Order*, pg. 71 ¶ EE. The Commission further correctly cites rule 20 CSR 4240-40.015, which states (in part) that "[a] regulated gas corporation shall not provide a financial advantage to an affiliated entity" and that this includes when a utility "transfers information, assets, goods or services of any kind to an affiliated entity below the greater of A. The fair market price; or B. The fully distributed cost to the regulated gas corporation." *Id.*, at ¶ GG. The Commission's finding of fact also correctly states that "[t]he Spire Missouri 2020 annual CAM report lists and describes each of six services and goods provided by Spire Missouri to each affiliate **and the holding company.**" *Id.* at pg. 69 ¶ 229 (emphasis added). Spire Inc. is the holding company for Spire Missouri. *Id.* at pg. 8 ¶6. ("Spire Missouri is a wholly-owned subsidiary of Spire Inc."). A review of the 2020 annual CAM report cited by the Commission shows that no costs were assigned to Spire Inc. for the majority of the six services and goods provided by Spire Missouri to

Spire Inc. Exhibit 203C, *Direct Testimony of Robert E. Schallenberg*, schedule RES-D-6 part 1, PDF pgs. 73 – 76 (Spire Missouri 2020 annual CAM report, pp. 36-40). Based on the Commission’s own findings and cited company material, Spire Missouri has thus provided (*i.e.* transferred) goods and services to Spire Inc. at no cost.

Because Spire has transferred goods or services to Spire Inc. at no cost, it has transferred goods or services below the greater of A. The fair market price; or B. The fully distributed cost to the regulated gas corporation. 20 CSR 4240-40.015. Spire Missouri has therefore provided Spire Inc. a financial advantage in a manner prohibited by Commission’s affiliate transaction rule 20 CSR 4240-40.015(2)(A). Because Spire has violated the Commission’s affiliate transaction rule, the Commission should order a disallowance to Spire Missouri’s revenue requirement and remove the cost of goods and services that Spire Missouri provided to Spire Inc. at no cost. Nothing in the Commission’s findings of fact, conclusions of law, or decision on this issue repudiates this simple point. Instead, the Commission has determined that it “cannot order an adjustment without sufficient evidentiary support.” *Report and Order*, pg. 73. This represents an unlawful shifting of the burden of proof from Spire to the OPC.

Missouri Revised Statutes section 386.150.2 states that “[a]t any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the gas corporation” Mo. Rev. Stat. § 386.150.2; *see also Report and Order*, pg. 11 ¶ H. It is therefore Spire’s obligation – not the OPC’s – to show what portion of the affiliate

transaction costs included in Spire’s case should be allowed recovery in rates. *See Mo. Am. Water Co. v. Mo. Pub. Serv. Comm’n*, 602 S.W.3d 252, 260 (Mo. App. WD 2020) (“Missouri-American bore the burden of proof with respect to the appropriate amount of the ADIT to be used in calculating the ISRS rate.”). Unfortunately, the Commission has now violated this basic legal principle by deciding the OPC failed to prove how much should be **disallowed** instead of requiring Spire to prove how much should be **allowed**. The Commission has effectively ordered that Spire be allowed to have its proposed increased rate unless the OPC meets an evidentiary burden to prove there should be a disallowance, which directly contradicts and violates Missouri Revised Statute § 386.150.2. This decision by the Commission to shift the burden of proof from Spire to the OPC renders the *Report and Order* both unlawful and unreasonable. *See Office of the Pub. Counsel v. Mo. PSC*, 409 S.W.3d 371, 372 (Mo. banc 2013) (“Because the PSC reviewed the transaction between Atmos and its affiliate through the lens of the presumption of prudence, its order is unlawful and unreasonable.”).

The shifting of the burden of proof is of particular importance because this is an issue involving affiliate transactions. Therefore, the Commission cannot rely on what has sometimes been called the “presumption of prudence” to support its decision. *Id.* at 379 (“The presumption of prudence is inapplicable to affiliate transactions.”). The PSC’s determination that it “cannot order an adjustment without sufficient evidentiary support” means that the Commission is committing the exact same error that the Missouri Supreme Court has previously reversed. *Id.* (“The PSC used the presumption of prudence to shift the burden from Atmos, which should have

been required to show that it complied with the affiliate transaction rules, and instead placed the burden on staff to show that Atmos did not do so.”). This decision by the Commission is thus clear error.

If the Commission determines that there is no evidence to show how much of Spire’s affiliate transaction costs represent the value of goods and services that the Company provided to Spire Inc. at no cost, then Spire has failed to meet its burden of proof to show that the recovery of those costs in rates is just and reasonable under Missouri Revised Statutes section 386.150.2. In that scenario, the correct action would be to disallow **all** affiliate transaction costs charged to Spire. By instead determining that it was the OPC’s obligation to prove that Spire’s proposed rate increase was not just and reasonable by proving the amount necessary to disallow these rule-violating costs, the Commission’s decision has contradicted the plain language of section 386.150.2. *Office of the Pub. Counsel v. Mo. PSC*, 409 S.W.3d at 381. The OPC thus requests the Commission amend to its *Report and Order* to correct this unlawful decision and, if necessary, order a new hearing to determine the proper amount that would need to be disallowed to remove the cost of goods and services Spire Missouri provided to Spire Inc. from Spire Missouri’s authorized rates.

WHEREFORE, the Office of the Public Counsel respectfully requests the Commission grant a rehearing and/or reconsideration of its November 12, 2021, *Amended Report and Order* issued in the above styled case pursuant to the authority of RSMo section 386.500.

