BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Spire Missouri Inc. to Change its Infrastructure System Replacement Surcharge in its Spire Missouri East Service Territory	))))	**File No. GO-2019-0115**
In the Matter of the Application of Spire Missouri Inc. to Change its Infrastructure System Replacement Surcharge in its Spire Missouri West Service Territory	))))	**File No. GO-2019-0116**

POST-HEARING BRIEF OF SPIRE MISSOURI INC.

COMES NOW Spire Missouri Inc. ("Spire Missouri" or "Company"), on behalf of itself and its two operating units Spire East and Spire West and, pursuant to the procedural schedule in the above captioned cases submits its Post-Hearing Brief. In support thereof, Spire Missouri states as follows:

INTRODUCTION/EXECUTIVE SUMMARY

The applications under consideration in this proceeding were filed pursuant to the Infrastructure System Replacement Surcharge ("ISRS") Statute on January 14, 2019.[1] The ISRS application for Spire East, as updated, seeks an increase in ISRS revenues of $9,257,817, while the ISRS application for Spire West, as updated, seeks an increase in ISRS revenues of $8,754,194[2] These proposed increases in ISRS revenues reflect ISRS investments made by the Company from October 1, 2017 through January 31 of 2019. To the extent approved by the Commission, the

[1] *See* Sections 393.1009-393.1015 RSMo
[2] Exhibit ("Ex") 8, p. 3, lines 13-17. As originally filed, the ISRS applications for Spire East and Spire West contained pro-forma estimates for ISRS plant that was expected to be placed in service in December 2018 and January 2019. Those pro-forma estimates were updated with actual ISRS investments numbers on February 25, 2019, resulting in the final revenue numbers identified above.

new ISRS charges reflecting these increases would go into effect on or before May 14, 2019, thereby superseding the ISRS charges currently in effect as a result of the Commission's Report and Order in the Company's last ISRS proceedings, Case No. GO-2018-0309 and Case No-2018-0310.

There were four major issues raised during these ISRS cases. One of them related to how income taxes (and associated tax deductions) should be calculated for purposes of determining the ISRS revenue requirement. That issue was settled by the parties prior to the hearing and is now before the Commission in the form of a "Stipulation and Agreement Regarding on Income Tax Issues" between the Commission Staff ("Staff") and the Company.[3] The Company and Staff have recommended that the Commission approve this Stipulation and Agreement and the Office of the Public Counsel ("OPC") has indicated that has no objection to this Stipulation and Agreement.

Another issue related to the overheads allocated or assigned to ISRS projects by the Company. Based on subsequent communications between the Parties, this issue has also been settled by the Parties and is now before the Commission in the form of a "Stipulation and Agreement on Overheads".[4] The Company, Staff and OPC have all recommended that the Commission approve this Stipulation and Agreement.

The first of the remaining two issues concerns whether the expenditures made by the Company on various ISRS projects are eligible for recovery under the ISRS statute. These include those costs incurred by the Company to replace cast iron and bare steel facilities, some of which involve the replacement of plastic facilities. They also include those more discrete, individual

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[3]*See* Stipulation and Agreement Regarding Income Tax Issues filed on April 8, 2019.
[4]*See* Stipulation and Agreement on Overheads filed on April 11, 2019.

expenditures charged by the Company to "blanket" work orders to replace leaking or corroded service lines or other unsafe facilities or to relocate facilities mandated by a state or local entity in connection with public improvement projects – all activities that are clearly ISRS eligible.

As discussed below, there appears to be no real dispute regarding the eligibility of the Company's blanket work order costs, subject to the parties' positions on the jurisdictional issue raised by Staff. The Company and Staff have also worked very hard to comply with the evidentiary roadmap established by the Commission in the Company's last ISRS cases for determining ISRS eligibility of those cast iron and bare steel replacement program costs that involve some replacement of plastic facilities. As a result of those efforts, which included performing 509 separate engineering analyses covering each ISRS project, both the Company and Staff believe they have isolated and eliminated any incremental costs associated with the replacement of potentially ISRS-ineligible plastic facilities. At the same time, customers continue to receive the benefits of lower ISRS costs in the far more numerous instances where replacing plastic was less expensive than reusing it.

Unfortunately, OPC continues to oppose the recovery of these costs. Although OPC has asserted that there must be a cost to replace plastic, it has not quantified or otherwise identified such a cost or even a method that could be used to quantify such costs. Nor did OPC review or rebut in any way the numerous engineering/cost studies that demonstrate otherwise. Instead, OPC seeks to render the whole plastics issue moot by arguing that *all* of the costs incurred in connection with the Company's cast iron and bare steel replacement programs are ineligible for recovery under the ISRS Statute because the Company has supposedly failed to show that these facilities are in a worn-out or deteriorated condition.

These are not tenable arguments. In effect, OPC would have the Commission believe that there remains a legitimate issue over whether these facilities are in worn out or deteriorated condition even though:

- The Commission determined nearly three decades ago that that these cast iron and bare steel facilities have the kind of problematic physical characteristics that warranted their expedited replacement through specially authorized programs;[5]

- The Commission reaffirmed just seven months ago (in the Company's last ISRS cases) that the age and tendency of such facilities to become brittle and crack due to graphitization and corrosion make them high risk and justify their expedited removal;

- Federal and state regulators have repeatedly urged utility regulatory bodies and gas utilities to accelerate their replacement of cast iron and bare steel mains through mechanisms like the ISRS, advice given in the wake of catastrophic and fatal incidents involving such facilities;

- Such facilities are already well past their expected average service lives that depreciation professionals such as OPC witness Robinett have previously estimated;

- The Company has provided additional evidence in this proceeding regarding the worn out or deteriorated condition of these facilities, including the testimony of an engineer closely involved with the Company's pipeline construction process

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[5] *See* 4 CSR 240.40.030(15).

– testimony describing how the well-understood physical characteristics of these aging facilities makes it an absolute certainty that they are in a worn-out or deteriorated condition; a conclusion borne out by his first hand observations.

- The Company has provided evidence showing that cast iron and bare steel facilities are among the highest risk facilities addressed by its Distribution Integrity Management Program – a Program implemented in accordance with the Commission's gas safety rules.[6]

Against this mountain of evidence, OPC offers nothing to substantiate its theory that these cast iron and bare steel facilities may not be in a worn out or deteriorated condition after all. Rather OPC recommends that the Company wait until a critical number of leaks have accumulated on sections of these facilities or engage in continual testing to determine when replacements are done. The Company respectfully submits that it would be a disservice to the safety of its customers and the public generally to use escaping gas as the driving force behind the pace of its replacement program. Escaping gas is an unpredictable and dangerous thing and recent events have demonstrated all too painfully that it can have disastrous and fatal consequences before anyone can act to contain it. These are the very kind of consequences that the ISRS Statue was designed to prevent and OPC should not be permitted to hollow out the core and effectiveness of that Statute in achieving these critical goals.

The second issue is perhaps the most consequential for the Commission as a regulatory institution. It involves the question of whether the Commission should voluntary surrender to the appellate courts of this state significant elements of the Commission's traditional authority to

[6] *See* 4 CSR 240-40.030 (17).

control how and when its exercises its ratemaking powers. The Staff has argued that the Commission has no jurisdiction to consider the inclusion of ISRS investments that were not recovered in the Company last ISRS cases because the Commission's Report and Order in those cases has been appealed to the Western District Court of Appeals.

Notably, in neither its initial Motion to Dismiss in which it first raised this jurisdictional issue or in its opening statement during the evidentiary hearing did the Staff cite any cases involving appeals of Commission's Orders. Instead, it focused solely on appeals of circuit court decisions involving disputes between private entities. The Staff's reliance on these non-Commission cases is telling since there is a rich history of jurisprudence relating to the interplay between appellate activity and the Commission's exercise of its ratemaking powers.

It was left to the Company in its March 22, 2019 Response to Staff's Motion to Dismiss, and to Chairman Silvey during his questioning at the evidentiary hearing, to introduce what the courts have said regarding the impact of an appeal on the Commission's jurisdiction to exercise its ratemaking powers in instances such as these cases. The case mentioned by Chairman Silvey was the 1996 appellate decision in ***State ex rel. Missouri Cable Telecommunications Association v Missouri Public Service Commission,*** 929 S.W.2d 768, 772 (Mo.App. W.D.1996), in which the Court ruled that neither the parties nor the Commission could approve the settlement of a matter that was under judicial review.[7]

The Company is not seeking, however, to settle the issues raised and decided by the Commission in the Company's last ISRS cases (Case Nos. GO-2018-0309 and 0310) or alter in any way the Report and Order issued by the Commission in those cases. Those prior cases

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[7] (Tr. 24, lines 6-11)

involved the issue of what ISRS charges the Commission should approve for the period commencing on October 8, 2018 and ending on May 14, 2019 when new ISRS charges are scheduled to become effective as a result of the new and separate ISRS cases currently be considered by the Commission. Those new ISRS charges will reflect the Commission's consideration of the new and different evidence presented in these cases and will be implemented on a prospective basis only. Most significantly, those new charges will have no effect on the charges collected by the Company during the prior period of October 8, 2018 to May 14, 2019 or the Report and Order that authorized them. Instead, it is the Missouri Court of Appeals that will decide what the ISRS charges for this prior period should have been based on its consideration of the lawfulness and reasonable of the Commission's September 20, 2018 Report and Order and the evidence that was presented in the prior ISRS cases.

Given these considerations, while the Court's reasoning in ***State ex rel. Mo. Cable Telecomms. Ass'n v. Mo. Pub. Serv. Comm'n,*** is certainly more relevant to the issue at hand than those case cited by Staff, it is not applicable under the facts and circumstances present here. This conclusion is further underscored by the Western District Court of Appeal's more recent decision in ***In the Matter of the Determination of Carrying Costs for the Phase–In Tariffs of KCP&L Greater Missouri Operations Company, AG Processing Inc. v. Missouri Public Service Commission***, 408 S.W.3d 175 (Mo.App.W.D. 2013). In its Opinion, the Commission determined that the PSC retained the jurisdiction and authority to consider in a new case what carrying costs should be applied during a phase-in period, even though the Commission's Order in the prior case establishing the phase-in was under judicial review. In so holding, the Court distinguished the Commission's action from prior cases, such as ***State ex rel. Mo. Cable Telecomms. Ass'n v. Mo.***

Pub. Serv. Comm'n, *supra,* where, as previously discussed, the Commission had attempted to approve a settlement of a matter that was currently before an appellate court. As the Court stated:

> These cases stand for the proposition that, once a writ of review is filed from an order of the PSC, "exclusive jurisdiction vest[s] in the circuit court where the appeal [is] filed; leaving the PSC without jurisdiction to alter or modify its order." Mo. Cable Telecomms. Ass'n, 929 S.W.2d at 772 (emphasis in original). The orders entered by the PSC in the Carrying Costs Case do not alter or modify the orders under review in the Rate Change Case; rather, they merely implement the orders in the Rate Change Case that approved a phase-in of $7 million of the approved increase and authorized carrying costs. Further, the cases above are distinguishable because, unlike the present case, each dealt with a subsequent order entered by the PSC in the same administrative case that was, or was alleged to be, under review. See, e.g., Mo. Cable Telecomms. Ass'n, 929 S.W.2d at 771 (the parties attempted to enter into a settlement agreement in the underlying administrative action while it was under review by the circuit court); Campbell Iron Co., 296 S.W. at 999–1000 (the PSC issued an order extending the length of the rate increase while the order granting the increase was under review); State ex rel. Kansas City v. Pub. Serv. Comm'n, 360 Mo. 339, 228 S.W.2d 738, 742 (1950). Id at 185.

The same exact circumstances which led the Court to conclude that the Commission had jurisdiction to consider and adjudicate the issues in the Carrying Cost case are applicable here. In fact, because the ISRS charges approved by the Commission in these current cases will apply to a different period than those approved in the prior ISRS cases, the case for Commission jurisdiction is even stronger. Staff Counsel acknowledged as much during his opening statement when he tried to explain why no one has previously argued in a rate case that the Commission lacks the jurisdiction to consider a particular revenue, cost or expense item because there is an appeal involving that item. As Staff Counsel explained:

> So in a rate case, you're being asked to set new prospective rates, rates that are going to apply in the future.· So the fact that the last rate case is on appeal doesn't stop you from deciding what the future rate's going to be for a new period.[8]

[8]Tr. 48, lines 21-25.

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

But even if the Commission still has some doubt about what the law requires on this issue, the Company would respectfully submit that it should not voluntary surrender a critical component of its historic powers to set prospective rates based on a consideration of all costs that are presented for its disposition. This is especially true where the Commission has been specifically instructed, as it has by the ISRS Statute, to consider and approve eligible ISRS costs so long as they have not already been included in the utility's rate base in its most recent rate case.[9] It is undisputed that the costs at issue here meet this statutory criteria. Moreover, their eligibility for ISRS inclusion has been demonstrated in the same exact way that the eligibility of the Company's newer ISRS investments has been established, with Staff's review and concurrence. For all these reasons, and those discussed below, the Commission should consider and approve these investments for inclusion in the prospective ISRS charges established in these cases.

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[9] *See* 393.1009(3)(C) RSMo which authorizes the inclusion of otherwise eligible ISRS investments so long as they "[w]ere not included in the gas corporation's rate base in its most recent general rate case" If Staff's jurisdictional argument was accepted, it would effectively create another requirement for ISRS eligibility that is nowhere mentioned in the ISRS Statute. Since it is the General Assembly that ultimately dictates the process and requirements for judicial review of Commission orders, the absence of anything in the ISRS Statute that suggests ISRS investments cannot be considered simply because they are the subject of an appellate proceeding is an additional reason for rejecting Staff's argument. Moreover, as discussed, *infra,* engrafting this additional requirement on processing an ISRS appeal, would operate to impair the legitimate rights of parties to seek judicial review while providing a perverse incentive for parties to pursue an appeal just to delay the Commission's regulatory consideration of various cost or revenue items.

ARGUMENT ON REMAINING ISSUES

A Are all costs included in the Company's ISRS filings in these cases eligible for inclusion in the ISRS charges to be approved by the Commission in this proceeding?

Except for any adjustments needed to comply with the Stipulation and Agreement on the Income Tax Issue, the Company submits that all of the costs included in its ISRS filing are eligible for recovery under the ISRS Statute. On a positive note, there appears to be significant agreement regarding the recovery of the blanket work order costs included in the filing, at least those for those incurred on and after July 1, 2018. As discussed by Company witness Wes Selinger, as part of its "deeper dive" into these costs, the Company provided a much more granular set of analyses in these cases which it analyzed literally thousands of individual expenditures charged to these work orders, and then placed them into various categories that were clearly ISRS eligible or excluded them because they did not fit into those categories.[10] The results of this intensive analysis were applied to all blanket work order cost.[11] After review of these analyses, the Staff has now concluded that such blanket work order costs are appropriate for inclusion in the Company's recoverable ISRS costs and even the OPC has also indicated its acceptance of blanket work order costs relating to facilities replaced due to leaks and relocations.[12]

The Company and Staff also agree on the ISRS eligibility of those costs incurred in connection with Commission-approved cast iron and bare steel replacement programs, including those that involve the replacement rather than reuse of some plastic facilities.[13] To arrive at this juncture, the Company and Staff took very seriously the evidentiary roadmap laid down by the

[10] Ex. 8, p. 6, lines 6-22.
[11] *Id.*
[12] Ex. 8, p. 8, lines 19-23.
[13] Again, Staff's concurrence in the recovery of these costs is subject to its position that all ISRS costs incurred prior to July 1, 2019 cannot be considered by the Commission due to a supposed lack of jurisdiction. That issue will be addressed elsewhere in this Brief.

Commission in Case Nos GO-2018-0309 and 0310 for demonstrating the eligibility of such costs consistent with the the Western District Court's November 21, 2017 Opinion on this issue in 539 S.W.3d 835.[14] In prior ISRS and rate case proceedings the Company had presented engineering/cost studies relating to a number of projects that showed that the replacement rather than reuse of such plastic facilities actually served to reduce rather than increase its ISRS costs and charges. Although no party had ever taken issue with the design, accuracy or results of such studies, the Commission ultimately determined in the prior cases that the Company had provided too few analyses to justify the inclusion of the full costs of such projects. At the same time, the Commission spelled out in its Report and Order what the Company would need to do to demonstrate the ISRS eligibility of these costs in future ISRS cases. These included the option of performing the same kind of engineering/cost analysis for each of the projects included in its ISRS filing. As the Commission stated:

> In the future, if Spire Missouri wishes to renew its argument that plastic pipe replacements result in no cost or a decreased cost of ISRS, it should submit supporting evidence to be considered, such as, but not limited to, a separate cost analysis for each project claimed, evidence that each patch was worn out or deteriorated, or evidence regarding the argument that any plastic pipe replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.[15]

To that end, the Company prepared and submitted 509 individual engineering/cost studies of all of its ISRS projects. As discussed in detail by Company witness Atkinson in his direct

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[14] In its November 21, 2017, Opinion, the Court remanded the Commission's Report and Order from two earlier ISRS cases so that the Commission could address the issue of what costs resulting from the replacement of plastic pipe should be excluded from the ISRS. *Id.* at 841. The evidentiary roadmap approved by the Commission, and the substantial analyses performed by the Company and reviewed by the Staff pursuant to that roadmap, have now identified and eliminated such costs in full compliance with the Court's remand instructions.

[15] *See* Case Nos. GO-2018-0309 and 0310, Report and Order, pages 15-16 (Order issued September 20, 2018).

testimony, the Company performed these studies utilizing compatible units ("CU's") to calculate what the cost for a project would be where plastic was replaced rather than reused and what the cost of the project would be if plastic was reused rather than replaced.[16] The CU's provide an estimated cost for each of the different items and variations of items underlying a project such as pipe materials and fittings, indirect overheads, labor hours, and other equipment.[17] The CU' s and their associated cost estimates are updated on a periodic basis for accuracy and are used by the Company's Construction Engineering group when designing replacement and other types of projects. In order to perform as accurate of a comparison as possible, each analysis was reconstructed using the most updated CU's. This created an apples-to-apples comparison of the engineering decision that would be made when planning these projects.[18] The CU's are the basis for deriving the amounts that make up the larger cost categories of labor, materials, tools, and overheads. The Company's Construction Engineering group applied the appropriate units of measurement (whether hours, feet, etc.), to each required CU to complete its estimates.[19] As Mr. Atkinson explained, this level of estimation demonstrates the amount of detail underlying Spire's analyses. The Company also made all project details, down to this level for each analysis, available to the other parties in these proceedings as part of the discovery process.[20]

In those instances where a study showed that replacement rather than reuse of plastic increased cost, the Company eliminated from its ISRS costs the incremental increase.[21] In those instances where the study showed that replacement rather than reuse of plastic reduced cost, the

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[16] Ex. 6, p. 7, lines 1-16,
[17] *Id.*
[18]*Id.*
[19]*Id.*
[20] *Also see* Staff Direct Report, Ex. 101, pp. 6-7, for an additional description of this analytical process.
[21] Ex. 8, p. 5, line 16 to p. 6, line 5.

Company included the actual cost of the ISRS project, thereby passing through to its customers the associated savings.[22] In total, based on the 509 engineering/cost analyses, the replacement rather than reuse of plastic facilities reduced the Company's ISRS costs and charges for Spire Missouri by approximately $1.6 million.[23]

Moreover, as Company witness Atkinson explained during the evidentiary hearing, the Company's replacement rather than reuse of plastic was also "incidental" to its cast iron and bare steel replacement programs.[24] Although OPC witness Robinett had a difficult time defining when the replacement rather than reuse of plastic would be incidental,[25] the results of the undisputed engineering/cost studies performed by the Company and reviewed by the Staff have served to confirm the truly incidental nature of these plastic replacements. As Judge Dippell noted when questioning OPC witness Robinett during the evidentiary hearing, one definition of "incidental" is something that is a "minor item of expense."[26] Mr. Robinett agreed that something that fit this definition could be considered incidental.[27] Given that the undisputed engineering/cost studies presented in these proceedings show that there is no net cost, but instead a cost savings, associated

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[22] *Id.*

[23] Based on this approach, the Company would have, for example, eliminated from its ISRS request all of the excess costs associated with replacing rather reusing plastic that were shown for Spire West n Staff's late-filed Exhibit 104, while giving customers the benefit of all of the resulting saving shown for Spire East. Given this already asymmetrical approach taken by the Company in favor of customers, Spire does not believe it would be appropriate to exclude all of the cost of an ISRS project simply because the replacement rather than reuse of plastic made it slightly more expensive. Such an approach would result in a significant exclusion of plainly eligible costs even though any incremental cost of replacing plastic has already been eliminated. The Company respectfully submits that such a result would not be consistent with the spirit of the evidentiary roadmap established by the Commission.

[24] Tr. 125, line 18 to Tr. 126, line 20.

[25] See Tr. 267, lines 7-23,

[26] Tr. 273, lines 5-12.

[27] *Id.*

with the replacement rather than reuse of plastic, these results necessarily mean that such replacements of plastic were indeed incidental in nature.[28]

Staff also agreed that the replacement rather than reuse of plastic facilities was an incidental aspect of the Company's replacement program, noting at page 5 of March 15, 2019 Recommendation that "[f]rom an economic and engineering viewpoint, Staff considers such replacement to be incidental to or required undersection 393.1009(5)(a) RSMo and consistent with the recent Western District Court of Appeals decision." During the evidentiary hearing, Staff witness Poston further agreed that the avoided cost studies performed by the Company helped to demonstrate the incidental nature of plastic replacements.[29]

It is important to note that the Staff cooperated closely with the Company in reviewing these cost studies and in suggesting various enhancements to facilitate its review. As the Staff points out in the Direct Report it submitted in this proceeding:

> Numerous meetings were organized between the parties in which participants could ask questions about specific projects or the avoided cost study format in general. Time was also taken to ask about terminology or abbreviations used by the Company within the avoided cost studies. These meetings were typically productive and helped to improve the quality of Staffs review of the avoided cost studies. It would be expected that any changes to future avoided cost studies would require additional contact between parties to ensure that the same high level of information sharing would continue to take place.[30]

As a result of its review, Staff indicated in its recommendation and testimony that such studies comply with the evidentiary roadmap established by the Commission and demonstrate the eligibility of the Company's ISRS costs.[31]

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[29] Tr. 227, lines 5-11.
[30] Ex. 101, Staff Direct Report, p. 8, lines 19-26,
[31] Ex. 101, Staff Direct Report, p. 4, 18-26; p. 11, lines 18-22.

As previously discussed, the Company has also submitted for inclusion in its ISRS costs and charges investments that were made in its prior ISRS case, but not recovered because of the Commission's determination that the analyses provided by the Company to support the ISRS eligibility of those costs was not extensive enough. For purposes of these ISRS cases, the Commission's finding has been addressed by the Company's far more extensive and more granular analyses. The Company has analyzed and treated these prior capital investments exactly as it has treated the projects that were first introduced in these proceedings, and is requesting that, on a going forward basis, the Company be authorized ISRS ratemaking treatment for these capital investments. Since the ISRS eligibility of all of these prior costs has now been established, and because they all qualify for inclusion under the criteria set forth in the ISRS statute (including not being recovered in the Company's last rate case), the Commission should approve recovery of such costs along with the new costs and charges approved by the Commission in this filing.

B. <u>If a Party believes that certain costs are not eligible for inclusion in the ISRS charges to be approved by the Commission in this proceeding, what are those costs and why are they not eligible for inclusion?</u>

Given the settlement of the income tax and overheads issue, there are only two primary objections remaining to the inclusion of certain costs in the Company's ISRS filings. One of them concerns OPC's contention that the costs incurred by the Company to carry out its Commission-approved cast iron and bare steel replacement program are ineligible for ISRS treatment. OPC takes issue with a few of the activities undertaken by the Company in connection with these replacement programs, such as service transfers and service renewals. But the main thrust of its objections center on the theory that the Company has not sufficiently demonstrated that the cast iron and bare steel being replaced by the Company under these programs are in "a worn out or deteriorated condition" as contemplated by the ISRS Statute. The second primary objection, of course, concerns Staff's contention that the Commission lacks jurisdiction to consider and approve

for inclusion in ISRS charges those ISRS investments incurred prior to July 1, 2018 but not fully recovered in the Company's last ISRS cases. As discussed below, neither of these objections have merit and should be disregarded by the Commission.

OPC's ISRS Eligibility Objections

It is worth noting that while OPC was invited to participate in the process for determining the impacts of plastic replacements on ISRS costs, OPC has acknowledged in its own testimony, that it did not perform any meaningful review of the numerous studies that were prepared to demonstrate whether or to what extent the replacement rather than reuse of plastic affected ISRS costs.[32] As a consequence, OPC presented no evidence in this case to dispute the design, structure or results of the numerous engineering studies that the Company has performed and the Staff has reviewed which demonstrate that the replacement rather than reuse of plastic has reduced rather than increased the Company's ISRS costs and charges on a net basis. Instead, OPC continues to oppose the recovery of these costs on the theory that there must be some cost to replacing plastic facilities even though the studies it has completely ignored demonstrate otherwise.

Notably, unlike the Company and Staff, OPC has not quantified *any* cost impacts resulting from the Company's replacement rather than reuse of plastic or even a method for determining

[32](Ex. 200, p. 12, lines 17-18). OPC's complete failure to engage in the process suggested by the Commission for determining the impact of replacing plastic on ISRS costs makes its assertion that the Company has not complied with the Missouri Court of Appeals prior decision on the plastic issues particularly offensive. (*See* Ex. 200, pp. 4, 13). The fact is that the Company and the Staff have worked countless hours and expended significant resources to respond in a thorough and comprehensive manner to the Court's instruction that the Commission determine what costs, if any, should be excluded from the Company's ISRS costs and charges due the replacement of plastic facilities. OPC, on the other hand, has done literally *nothing* to address this instruction by the Court. Even today, OPC continues to muse on what method might be employed to answer this question while showing no interest in the process that was actually undertaken to do so. (Tr. 269, lines 17-22). Given these considerations, OPC is in a singularly poor position to invoke the Court's opinion in support of its arguments.

such cost impacts. Indeed, during the evidentiary hearing, OPC witness Robinett even expressed reservations regarding the propriety of the percentage-based method used by the Commission in the Company's last rate case to quantify what "costs" associated with plastic replacements should not be included in ISRS charges.[33] He suggested that a different "double ratio" method might more appropriately recognize the more efficient process employed by the Company to replace its facilities, but did not describe how such a double ratio method might work or what results it would produce.[34]

Given OPC's inability to offer anything tangible to support the contention that there must be a cost to replacing plastic facilities, OPC simply attempts to render the whole issue moot. It does so by now arguing that *all* of the costs incurred by the Company in connection with its Commission's-approved cast iron and bare steel replacement program are ineligible for ISRS recovery based on the completely untenable theory that the Company has not sufficiently demonstrated that such facilities are in "worn out or deteriorated condition" within the meaning of the ISRS Statute.

OPC's theory is untenable because to accept it, the Commission would have to conclude that that there is still a serious question about whether these cast iron or bare steel facilities are in a worn-out or deteriorated condition nearly *three* decades after the Commission first determined that they had the kind of problematic physical characteristics that warranted their replacement

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[33]Although Mr. Robinett expressed concerns regarding the propriety of the percentage-based method used by the Commission in the Company's last rate case to exclude costs on the plastics issue, he nevertheless suggested that it could be used again even though no party endorses its reasonableness. (Ex. 200, p. 14, lines 6-13). Par for the course, however, Mr. Robinett indicated that he had made no effort to quantify what disallowances would result from the application of this discredited method. (*Id.*) Again, OPC has provided nothing in these cases that could be used as a basis for disallowing any costs.
[34] Tr. 269, lines 17-22.

through specially authorized programs and nearly *seven* decades after the Company first began voluntarily replacing cast iron and bare steel facilities for the same reasons.[35] OPC can argue what it wants but it cannot suspend the laws of physics and have everyone else pretend such facilities may have mysteriously regenerated rather than become more deteriorated after spending another 30 to 70 years in the ground.

OPC's theory also ignores the Commission's explicit findings in the Company's most recent ISRS proceedings to the effect that:

> Most of the cast iron pipes being replaced are over a hundred years old. Cast iron pipes are unsafe to use because they undergo a process called graphitization, in which the iron leaches out making the pipe subject to cracking and leaking. The steel pipe being replaced is bare and not cathodically-protected, so those pipes corrode relatively quickly and need to be replaced.[36]

Again, OPC would have the Commission play a regulatory version of ground-hog day and pretend that these essential facts have to be re-proven over and over again even though OPC has not submitted *any* evidence in this proceeding to show that what was true 7 months ago (let alone 30 years ago) regarding the inherent characteristics of these facilities does not remain true today.

OPC also ignores the evidence that *has* been presented in these proceedings regarding the worn-out or deteriorated condition of these facilities. In addition to the historical determinations discussed above, this evidence included the testimony of Rob Atkinson, a mechanical engineer employed by the Company who has extensive experience in the planning and supervision of pipeline projects, including those undertaken as ISRS projects.[37] Mr. Atkinson testified that there

[35]See the discussion, infra, relating to the history of the Company's historical efforts to replace cast iron and unprotected steel facilities beginning in the late 1950's.
[36]See Case Nos. GO-2018-0309 and 0310, Report and Order, page 6, Finding of Fact No. 13 (Issued September 20, 2018).
[37] Ex. 6, pp. 1 -2.

was, in fact, abundant evidence that the Company's cast iron and bare steel facilities are in a worn out or deteriorated condition. He specifically referenced joint statements sent by federal pipeline safety officials at DOT and PHMSA to regulatory authorities, including the National Association of Regulatory Utilities Commission ("NARUC") in December of 2011 in the wake of several catastrophic natural gas incidents that had recently occurred.[38] In their joint statement, these federal safety officials continued to recommend the accelerated replacement of high-risk infrastructure in pipeline systems, calling out in particular cast iron and bare steel facilities.[39] They also noted with approval those regulatory mechanisms, such as the ISRS, which facilitate these accelerated replacements.[40] As Mr. Atkinson observed, these advisories by federal safety officials to accelerate the replacement of cast iron and bare steel facilities reflect their judgement that such facilities are in a sufficiently worn out or deteriorated condition that they pose a threat to public safety[41] If they weren't in a worn out or deteriorated condition, logic dictates that there would be no need to expedite their replacement.

Mr. Atkinson also testified that routinely testing such facilities, as suggested by OPC, to determine if they are in a worn out or deteriorated condition would be a prohibitively expensive and completely unnecessary measure to establish such a fact.[42] Indeed, such an exercise would be akin to testing water to determine if it is wet. As Mr. Atkinson testified, the worn out or deteriorated condition of these facilities is confirmed daily as Company personnel go about the business of replacing them:

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[38] Tr. 75, lines 15-20; Tr. 76, lines 7 to 25. PHSMA is an acronym for the federal Pipeline and Hazardous Materials Safety Administration; which is agency of the federal Department of Transportation ("DOT").
[39] *Id.*
[40] *Id.*
[41] Tr. 77, lines 1-6.
[42] Tr. 77, lines 15-25.

> [Mr. Atkinson] When we do dig these – these items – these pipelines up to do replacements, we see regularly that they are in a worn out or deteriorated condition. Many times with cast iron there's not much left of – the ability for that pipe to – be viable for that gas line.[43]

In fact, the worn out or deteriorated condition of these facilities is so pervasive, that those working to replace them rarely, if ever, encounter a situation where such facilities are not in such a condition. Again, as Mr. Atkinson explained:

> Q. Yeah. And to your knowledge and based on your experience with, you know, cast iron and unprotected steel being taken into the ground, how often do you encounter a situation where tho --- where those facilities are not in a worn out or deteriorated condition?
>
> A. [Mr. Atkinson] I – I've *never* seen a case where we've dug up cast or bare steel pipe that has not shown to be in some – some sort of a deteriorated state.[44]

Another indication of the worn out or deteriorated condition of these cast iron and bare steel facilities can found in the Company's Distribution Integrity Management Program or "DIMP" that the Company formulated and maintains pursuant 240-40.030(17) of the Commission's natural gas safety rules. Under the provisions of this rule, all natural gas operators within the state were required to have a written DIMP in place by no later than August 2, 2011.[45] The purpose of the DIMP, as evidenced by the Rule's provisions, is to ensure that gas operators, like the Company, have a robust program in place for gathering information necessary to evaluate the characteristics of their pipeline systems design and operations so that it can assess "the applicable threats and risks to its gas distribution pipeline".[46] Once those risks are identified, the

[43] Tr. 78, lines 1-6.
[44] Tr. 78, lines 21-23.
[45] 4 CSR 240-40.030(17)(C).
[46] 4 CSR 240-40.030(17)(D)1.A

Rule also requires that the DIMP "[d]etermine and implement measures designed to reduce the risks from failure of its gas distribution pipeline."[47]

As Mr. Atkinson testified, the Company's DIMP identifies its cast iron and bare steel facilities as posing higher risks than other facilities.[48] Again, this elevated ranking of the risks posed by these facilities, as codified in a DIMP that has been performed by the Company in compliance with the Commission's safety regulations is, as Mr. Atkinson observed, a further reflection of the fact that such facilities are indeed in a worn out or deteriorated condition.[49]

In addition to all of these indicia of the worn out or deteriorated condition of these facilities, Mr. Atkinson also pointed to the fact that many of its cast iron and bare steel facilities, some of which have been in the ground for more than a century, are older than their average service lives, which is 80 years for mains at Spire East and 50 years for mains at Spire West.[50] Notably, these average service lives have been compiled or endorsed by a variety of depreciation professionals over the years, including those working for the Company, Staff and even OPC. In attempting to downplay the significance of the fact that these facilities are relatively old compared to what depreciation professionals have calculated to be their expected service lives, OPC witness Robinett went to some lengths to argue that age alone does not conclusively demonstrate that a facility is in a worn out or deteriorated condition.[51]

As Company witness Atkinson explained, however, the Company has never taken the position that age *alone* determines whether a facility is in a worn out or deteriorated condition.[52]

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[47] 4 CSR 240-40.030(17)(D)4.
[48] Tr. 129.
[49] Tr. 79, lines 12-14.
[50] Tr. 127
[51] Ex. 200, pp. 8-9.
[52] Tr. 79, lines 6 to 14.

Indeed, the Company's assessment that its cast iron and bare steel facilities meet this criteria is based on all of the considerations and factors discussed above.[53] But that does not mean that the age of these facilities is somehow irrelevant.[54] The Company is not replacing cast iron or bare steel facilities that were installed in the last decade or two, but rather facilities that were installed in the earlier part of the last century. And like any other physical item that has been buried in the ground for extended period of time they have inevitably deteriorated.[55]

Instead of recognizing these laws of physics and chemistry, OPC suggests we return to a time before these catastrophic events occurred and gas utilities, like Spire, implemented distribution integrity management programs and simply wait for a certain number of leaks to occur on stretches of these facilities before anything is done to replace them.[56] In support of this proposition, OPC Robinett attaches to his testimony copies of the Company's cast iron and bare steel replacement programs as originally approved by the Commission for MGE and Laclede Gas decades ago pursuant to . (Ex. 200, Schedules JAR-D-4 and JAR-D-5).

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[53] *Id.*

[54] *Id.*

[55] Although he did not address the issue in its direct testimony, OPC witness Robert Schallenberg attempted on rebuttal to muddy the waters on the significance of service lives established in the depreciation process to the issue of when facilities should be considered used up and taken out of service. The Company believes his testimony on this issue should be completely disregarded by the Commission, because Mr. Schallenberg was unable or unwilling, when asked, to even acknowledge that the basic purpose of depreciation accounting is to allocate the cost or value of an asset ratably over its expected useful life. (Tr. 334). Although Mr. Schallenberg claimed it was not, the authoritative text submitted by his own colleague, Mr. Robinett, as part of his direct testimony clearly states that "depreciation accounting is fundamentally a process of allocating in a systematic and rational manner the value of a depreciable asset over its life." (Ex. 200, Schedule JAR-D-6, p. 2/9). The text attached by Mr. Robinett also includes a bulletin from the American Institute ·of Certified Public Accountants which defines depreciation accounting as a "system of accounting which aims to distribute cost or other basic value of tangible capital assets, less salvage (if any); over the estimated useful life of the unit (which may be a group of assets) in a systematic and rational manner." (*Id.* p. 5/9).

[56] Ex. 200,

Far from supporting OPC's position, however, this material simply reconfirms the fact that the Company's cast iron and bare steel facilities are in worn out or deteriorated condition and need to be replaced. For example, those documents show that at the time the Commission approved the Company's cast iron replacement program more than 25 years ago, the Company had already been actively engaged in replacing such facilities because of the risks they posed. Indeed, these efforts started in the 1950's, or over 70 years ago.[57] Specifically, by 1993, Laclede Gas had already replaced all cast iron service lines as the result of a replacement program begun in *1961* to replace cast-iron and bare steel services to schools, churches, hospitals and other buildings of public assembly. *Id*. p. 26. It had also replaced another 331 miles of cast iron mains from *1957* to *1990.*[58] By 1993, the Company had also replaced all cast iron mains in the downtown area of the City of St. Louis with the exception one large diameter (24") main.[59]

All of these replacement efforts had the beneficial effect of reducing the leaks that occur from cast iron or unprotected steel breaks or leaks because of their inherent characteristics. The primary significance of this information is that it shows that worn out or deteriorated condition of these facilities was not suddenly discovered until 1989 when the Commission promulgated its rules requiring that gas utilities formally adopt replacement programs for these facilities. To the contrary, the problematic, worn-out or deteriorated nature of these facilities, and the need to replace them, had been recognized at least 30 years before the Commission promulgated its rules requiring formal replacement programs for these facilities – rules that are themselves now 30 years old.

[57] See Ex. 200; JAR-D-5, p. 27/34.
[58] Id. at 28/35
[59] Id.

Despite this history, OPC suggests that the Company should simply rely on criteria developed at the time these replacement programs were first approved more than 30 years ago and only remove such facilities when they experience a certain number of leaks on a certain length of pipe. Relying on escaping gas as the primary warning system on when these larger, higher pressure, facilities need to be replaced, especially given what we know as to the kind of catastrophic problems escaping gas can cause, is not an appropriate way to protect the safety of the Company's customers or the public.[60]

Regardless of such considerations, however, encouraging the more timely replacement of these kind of risk-bearing facilities is the exact kind of result that was contemplated by the General Assembly when its enacted the ISRS Statute. At the current pace of replacement made possible by the Statute, the Company is hopeful that 80 to 90 years after it first recognized such risks and began replacing cast iron and unprotected steel facilities due to them. it will be able to complete the job. Anyone who suggests that this is more than public safety demands is simply shortchanging the most important element of providing essential utility services – namely ensuring that customers and the public are kept safe.

As an apparent fall back position, the OPC also contended that costs incurred for certain activities, such as replacing service lines in those instances where inside meters were brought outside, and transferring old services onto new mains, were ineligible for ISRS treatment.[61] As

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[60] In its direct testimony, OPC asserted that the Company does not monitor leaks on its cast iron, unprotected steel and other facilities. As Mr. Atkinson explained, however, this is not true. Because of the extremely limited amount of time to respond to data requests, the Company referred OPC to the DOT website where leaks are reported by the Company and made available. But the Company also closely monitors where leaks occur through its system (Tr. 86, line 2 to Tr. 87, line 3) and uses such leak history to prioritize its cast iron and unprotected steel programs and make minimum mandatory replacements. (Tr. 81-82). The Company simply does not believe that replacements should be deferred until a certain number of leaks develop.

[61] Ex. 200, pages 6 to 7.

Company witness Atkinson explained, however, these contentions are groundless. In terms of OPC's contention that such services were being replaced primarily to accommodate moving meters from the inside to the outside the Company's premises, Mr. Atkinson testified that the cost of such service line replacements was actually *reduced* not increased by moving the meters from the inside to the outside; as demonstrated by the hundreds of engineering cost studies that OPC never bothered to review.[62] In addition to these costs savings, Mr. Atkinson also testified that moving meters outside was safer given the higher pressure system being installed.[63] Of course having meters on the outside would also avoid the customer inconvenience of having to be at home so a corrosion inspection on an inside meter could be performed, or to replace the meter or AMR metering device. In short, this was an activity that saved customers money, enhanced customer safety and contributed to customer convenience, and there is simply no basis for excluding any costs associated with this activity.

OPC's contention that certain, unidentified costs associated with service transfers should be excluded from ISRS recovery makes even less sense. Again, as Mr. Atkinson testified, if a service line is to be reused and continue to provide service to the customer once a new main is installed, it has to be "transferred" or attached to the new main.[64] In short, this is an unavoidable cost that must be incurred to complete a cast iron or unprotected main replacement project. It is accordingly fully eligible for ISRS treatment. Indeed, because the plastic service is being reused rather than replaced, the Company believed this would be the kind of activity that OPC would endorse. But it seems that whether plastic is being replaced or reused, OPC simply wants to disallow costs.

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[62] Tr. 83, line 14 to Tr. 84, line 10.
[63] Tr. 82 to 83.
[64] Tr 85, line 11 to Tr 86, line 1.

In light of all the evidence and other considerations discussed above, the Company submits that there is simply no basis for OPC's various arguments for excluding costs from the ISRS charges to be approved by the Commission in this proceeding. Those arguments should accordingly be rejected by the Commission.

Staff's Jurisdictional Objections

In its March 22, 2019, Response in Opposition to Staff's Motion to Dismiss Portion of ISRS Application, the Company provided an extensive legal analysis of why the pendency of an appeal of the Company's last ISRS cases does not and cannot interfere with the Commission's exercise of its statutory ratemaking power to consider and decide in these new ISRS cases whether and to what extent costs or revenues should be reflected in rates. The Company pointed out that such a proposition is demonstrated, in part, by the long line of cases applying the mootness doctrine in other appeals involving Commission decisions. See e.g. ***State ex rel. Missouri Public Service Co. v. Fraas***, 627 S.W.2d 882 (Mo.App.W.D. 1981); ***State ex rel. Monsanto Co. v. Pub. Serv. Comm'n***, 716 S.W.2d 791, 793 (Mo. banc 1986); ***In re Sw. Bell Tel. Co.'s Proposed Revision to Gen. Exch. Tariff***, P.S.C. MO–No. 35, 18 S.W.3d 575, 577 (Mo.App.2000) (quoting ***State ex rel. County of Jackson v. Pub. Serv. Comm'n***, 985 S.W.2d 400, 403 (Mo.App.1999)). These cases clearly indicate that it is the Commission that controls the process for considering and adjudicating new cases pursuant to its statutory authority, regardless of whether some element of that new case may involve certain costs, revenues or expenses that are under review in an appellate case. They also stand for the proposition that it is the appellate courts that will defer to the Commission once it exercises its ratemaking powers by determining whether and to what extent the court may provide relief given that the rates and charges under review have been superseded by new rates and charges.

That legal analysis has now been supplemented by the Company's discussion earlier in this brief of the Court's opinion in ***In the Matter of the Determination of Carrying Costs for the Phase–In Tariffs of KCP&L Greater Missouri Operations Company, AG Processing Inc. v. Missouri Public Service Commission***, 408 S.W.3d 175 (Mo.App.W.D. 2013). The clear import of this decision is that the reasoning by the Court in ***State ex rel. Missouri Cable Telecommunications Association v Missouri Public Service Commission*** for determining that Commission did not have jurisdiction in that case is simply not applicable here.

Since the Company has already discussed at length, both here and in its prior March 22, 2019 Response to Staff's Motion to Dismiss, why Staff is incorrect in its assertion that the Commission lack jurisdiction to consider and include these prior ISRS investment in the new ISRS charges to be approved in this case, it will limit its remaining argument on this issue to three points.

First, if the Staff's jurisdictional argument had merit, how is it that the Commission has routinely exercised its ratemaking powers in both ISRS and rate case proceedings even though some element of the costs being considered was an element of a judicial review proceeding? These circumstances have occurred repeatedly, including most recently in the Company's recent general rate case proceeding where the Commission rebased the Company's ISRS even though there was an appeal underway involving the costs underlying that ISRS. If there really was a basis for Staff's position, it stretches credulity to believe that the jurisdictional issue would have only surfaced now after dozens of ISRS cases and multiple rate cases.

Second, if the Commission approves Staff's legal position what practical and substantive problems will it engender in the future? Will the Commission have to determine at the outset of each ISRS, rate case, FAC or other proceeding, what costs cannot be considered because they are

an element in an appellate proceeding? Will the Commission have to permit such issues to be interjected later in the proceeding because the court has now ruled and there is no longer any jurisdictional barrier to proceeding? What detrimental impact would adopting Staff jurisdictional theory have on a party's right to seek judicial review if the mere act of doing so means the party is estopped, for an indefinite period of time, from seeking different rate treatment for the costs at issue in the appellate proceeding, even though the party is doing so in a new ratemaking proceeding, and has new evidence to support its position that is not before the appellate court. What perverse incentive would adopting Staff's jurisdictional theory have on parties who simply want to pursue an appeal so as to prevent the Commission from considering – for months or even years at a time – some cost or revenue item in a new rate proceeding. The Commission has not had to grapple with these issues before because quite frankly a jurisdictional theory like that posited by the Staff in this proceeding has never been adopted. But these are the very real and very problematic issues that would have to be dealt with by the Commission should it decide to go down the path Staff has suggested.

Finally, in the event the Commission rejects Staff's jurisdictional argument, as the Company believes it should, the evidence is clear that it should permit the Company to recover these prior investments by including them in the ISRS charges approved in these proceedings. The Company witnesses have affirmatively testified that the exact same analyses that were performed to substantiate the eligibility of the newer ISRS investments were also done in connection with these prior investments.[65] Moreover, those analyses have produced the exact same results.[66] When combined with the fact that these older investments have now been subjected to two separate

[65]Ex 6, p. 10, lines 6-14.
[66] *Id*.

reviews by Staff and OPC, once in the prior ISRS proceedings and again in these ISRS proceedings, there is simply no fair or equitable basis for delaying their inclusion in the ISRS charges approved by the Commission in these cases.

CONCLUSION

For all of the reasons set forth herein, the Company respectfully requests that the Commission issue its Report and Order approving in their entirety the ISRS revenues proposed by the Company for Spire East and Spire West based on their respective applications, as updated.

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 15th day of April, 2019, to all counsel of record.

/s/Michael C. Pendergast
Michael C. Pendergast