

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 15th day of May, 2019.

In the Matter of the Application of Spire Missouri Inc. to)
Change its Infrastructure System Replacement) **File No. GO-2019-0115**
Surcharge in its Spire Missouri East Service Territory) Tracking No. YG-2019-0201

In the Matter of the Application of Spire Missouri Inc. to)
Change its Infrastructure System Replacement) **File No. GO-2019-0116**
Surcharge in its Spire Missouri West Service Territory) Tracking No. YG-2019-0202

**ORDER APPROVING TARIFF IN COMPLIANCE WITH COMMISSION
ORDER, GRANTING EXPEDITED TREATMENT, IN PART, AND
DENYING MOTION FOR RECONSIDERATION**

Issue Date: May 15, 2019

Effective Date: May 25, 2019

The Commission issued its *Report and Order* on May 3, 2019, authorizing Spire Missouri Inc. (Spire Missouri) to submit tariff sheets setting a different infrastructure system replacement surcharge (ISRS). Spire Missouri filed its compliance tariffs (Tariff Nos. YG-2019-00201 and YG-2019-0202) on May 6, 2019, bearing a 30-day effective date of June 5, 2019. Spire Missouri also requested expedited treatment of its compliance tariffs so that they become effective on May 14, 2019, the same date the *Report and Order* becomes effective.

The Commission issued an order directing the Staff of the Commission (Staff) to file a recommendation regarding the tariffs no later than May 9, 2019, and directing that any objections to the motion for expedited treatment be filed by May 10, 2019. Staff filed its recommendation indicating that it had reviewed the compliance tariffs and found them

to be in compliance with the Commission's order. Staff recommended that the motion for expedited treatment be granted.

The Office of the Public Counsel (Public Counsel) filed its response on May 10, 2019. Public Counsel raised two objections to the tariffs. However, these objections were to the substantive issues decided by the Commission that Public Counsel intended to raise in its application for rehearing or reconsideration, and not to whether the tariffs complied with the Commission's *Report and Order*. Public Counsel's arguments were that the calculation of Spire Missouri's revenue requirement does not reflect a necessary reduction in net property taxes, and that the tariffs permit recovery for cast iron and bare steel that is not worn out or deteriorated. These arguments will be addressed by the Commission in response to the request for rehearing or reconsideration.¹ Public Counsel did not object to the motion for expedited treatment. On May 14, 2019, in response to Public Counsel's objections, Staff verified that the tariff sheets comply with the Commission's Report and Order.

In its order directing responses to the motion for expedited treatment, the Commission indicated that it could not issue an order approving the compliance tariffs with a less than ten-day effective date as requested by Spire Missouri. On May 10, 2019, Spire Missouri filed a motion requesting the Commission reconsider this conclusion that approval of the compliance tariffs requires at least a ten-day effective date, and approve the compliance tariffs to become effective on May 14, 2019. Spire Missouri argued that the Commission was required to approve the tariffs to become effective by the 120th day

¹ On May 13, 2019, Public Counsel filed a request for rehearing or reconsideration raising these two issues.

after the filing of its ISRS filing that started this case and that an order approving a compliance tariff does not require a ten-day effective date.

Section 393.1015.2(3), RSMo. 2016, states that “[t]he commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred twenty days after the petition is filed.” Subsection 4 of that statute also states that if the Commission determines that the company’s petition complies with the ISRS law, “the commission shall enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue.” However, the ISRS statute does not require a compliance tariff to become effective by a specified date.

The deadline for the effective date of the Commission’s order described in Section 393.1015 was May 14, 2019. The *Report and Order* rejected the previously-filed tariffs and authorized Spire Missouri to file new tariffs to recover appropriate revenue under the ISRS approved by the Commission. Therefore, the Commission complied with Section 393.1015 when it issued its *Report and Order*, which was effective before the 120-day deadline. That deadline does not apply to subsequent compliance tariffs filed by the company to implement the *Report and Order*.²

Under Section 386.490.2, RSMo. 2016, Commission orders will become effective after 30 days, unless otherwise provided. The Commission indicated in its order directing responses that it could shorten the effective date of an order approving the compliance

² See, *In Matter of Kansas City Power & Light Co.'s Request for Auth. to Implement a Gen. Rate Increase for Elec. Serv. v. Missouri Pub. Serv. Comm'n*, 509 S.W.3d 757, 786 (Mo. App. 2016), “The Report and Order of the PSC is the culmination of the hearing required by law and is the order of the PSC establishing new rates or charges for public utilities. Subsequent orders by the PSC ensuring compliance with the Report and Order are orders issued in a non-contested case merely implementing the previous decision of the PSC.”

tariff but such order would require at least a ten-day effective date. Spire Missouri argues that because the Missouri Western District Court of Appeals has stated that compliance tariffs are “merely implementing” the Commission’s previous order, there is no need for a ten-day effective date.³ However, the Western District Court of Appeals also stated, in a case regarding the approval of a compliance tariff, that “any shortening of the date on which PSC orders will become effective to less than ten days is presumptively unreasonable and, if challenged, would require the PSC to demonstrate that the circumstances surrounding the case are so extraordinary as to clearly warrant further encroachment on the time provided to the parties in which to exercise their right to apply for rehearing and/or appeal and that the time allowed was reasonably sufficient.”⁴

While Spire Missouri established good cause for the compliance tariffs to become effective on less than 30 days’ notice, Spire Missouri has not demonstrated sufficient extraordinary circumstances that would permit the Commission to shorten the date on which the Order will become effective to less than ten days. The Commission concludes that Spire’s Missouri’s motion for reconsideration should be denied.

The Commission has reviewed the tariff filings and Staff's recommendation and concludes that the tariffs should be approved and the unopposed motion for expedited treatment should be granted to permit the tariff sheets to become effective on less than 30 days’ notice. However, the Commission determines that the earliest date that the Commission can make the tariff sheets effective is May 25, 2019.

³ *In Matter of Kansas City Power & Light Co.'s Request for Auth. to Implement a Gen. Rate Increase for Elec. Serv. v. Missouri Pub. Serv. Comm'n*, 509 S.W.3d 757, 786 (Mo. App. 2016).

⁴ *State ex rel. Office of the Public Counsel v. Public Service Commission*, 409 S.W.3d 522, 529 (Mo. App. 2013).

THE COMMISSION ORDERS THAT:

1. *Spire Missouri Inc's Motion for Expedited Treatment* filed on May 6, 2019, is granted to the extent described in the body of this order.
2. The tariff sheets, bearing Tariff No. YG-2019-0201, filed on May 6, 2019, by Spire Missouri Inc. for its Spire Missouri East service territory, are approved to become effective on May 25, 2019.
3. The tariff sheets, bearing Tariff No. YG-2019-0202, filed on May 6, 2019, by Spire Missouri Inc. for its Spire Missouri West service territory, are approved to become effective on May 25, 2019.
4. *Spire Missouri Inc's Motion for Reconsideration of Order Stating a Need for 10 Day Effective Date on Compliance Tariffs* is denied.
5. This order shall become effective on May 25, 2019.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and
Coleman, CC., concur.

Dippell, Senior Regulatory Law Judge