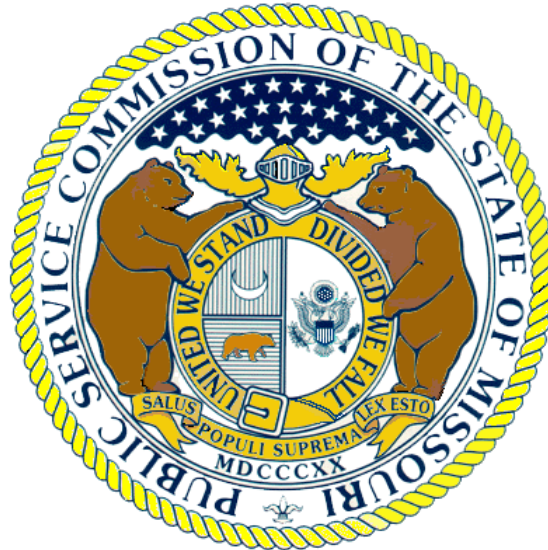


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of the Application of Spire Missouri Inc. to )  
Change its Infrastructure System Replacement ) **File No. GO-2019-0115**  
Surcharge in its Spire Missouri East Service Territory ) Tracking No. YG-2019-0138

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. JG-2019-0139

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**REPORT AND ORDER**

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**Issue Date: May 3, 2019**

**Effective Date: May 14, 2019**

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OF THE STATE OF MISSOURI**

In the Matter of the Application of Spire Missouri Inc. to )  
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Surcharge in its Spire Missouri West Service Territory ) Tracking No. JG-2019-0139

**APPEARANCES**

**SPIRE MISSOURI:**

**Michael C. Pendergast**, of Counsel, Fischer & Dority, P.C., 423(R) South Main Street, St. Charles, Missouri 63301, and **Rick Zucker**, Zucker Law LLC, 14412 White Pine Ridge, Chesterfield, MO 63017

**OFFICE OF THE PUBLIC COUNSEL:**

**John Clizer**, Associate Public Counsel, and **Lera Shemwell**, Senior Counsel, PO Box 2230, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102-2230

**STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

**Kevin A. Thompson**, Chief Staff Counsel, **Robert S. Berlin**, Deputy Counsel, and **Ron Irving**, Staff Counsel, PO Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

**SENIOR REGULATORY LAW JUDGE:** Nancy Dippell

# REPORT AND ORDER

## I. Procedural History

On January 14, 2019, Spire Missouri, Inc. (“Spire Missouri” or “Company”) filed applications and petitions with the Missouri Public Service Commission (“Commission”) to change its Infrastructure System Replacement Surcharge (“ISRS”) in its Spire Missouri East and Spire Missouri West service territories. Spire Missouri requested recovery of “new” infrastructure replacement costs for the period from July 1, 2018, through January 31, 2019 (“New ISRS Request”). In the applications, Spire Missouri also requested recovery of “old” infrastructure replacement costs for the period from October 1, 2017, through June 30, 2018 (“Old ISRS Request”).

The New ISRS Request is consistent with how ISRS applications have been processed traditionally at the Commission with regard to the relevant time frame of infrastructure replacements. The infrastructure replacement costs in the Old ISRS Request were previously denied by the Commission and those projects found ineligible under the requirements of the ISRS statute in File Nos. GO-2018-0309 and GO-2018-0310.<sup>1</sup> Both Spire Missouri and the Office of the Public Counsel (“Public Counsel”) appealed the Commission’s decisions in those cases to the Missouri Court of Appeals, Western District, and that appeal is pending.<sup>2</sup>

The Commission issued notice of the applications and provided an opportunity for interested persons to intervene, but no intervention requests were submitted. The

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<sup>1</sup> See File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order* (issued September 20, 2018).

<sup>2</sup> Missouri Court of Appeals, Western District, Docket No. WD82302 (consolidated with Docket No. WD82373).

Commission also suspended the filed tariffs until May 14, 2019.<sup>3</sup> On February 25, 2019, Spire Missouri filed updated requests for ISRS investments that included the month of January 2019.<sup>4</sup>

On March 15, 2019, the Staff of the Commission (“Staff”) filed its recommendation. Staff argued that the infrastructure replacement costs in the Old ISRS Request were outside the jurisdiction of the Commission due to the current appeal and, therefore, Staff did not include those costs in its recommended ISRS revenue requirement.<sup>5</sup> Staff further set out the revenue requirement it believed incorporated all the ISRS-eligible infrastructure replacements with regard to the New ISRS Request.<sup>6</sup> Staff recommended that the Commission reject the original tariff sheets and approve ISRS adjustments for Spire Missouri based on Staff’s determination of the appropriate amount of ISRS revenues.

Public Counsel filed its objections and request for hearing on March 15, 2019.<sup>7</sup> Public Counsel objected to the applications, stating that Spire Missouri had failed to show that replacement of the plastic mains and service lines claimed were required by state or federal mandates and were in deteriorated or worn out condition;<sup>8</sup> and that Spire Missouri had failed to show that any of the claimed infrastructure replacements were ISRS-

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<sup>3</sup> *Order Directing Notice, Setting Intervention Deadline, Directing Filing, and Suspending Tariff Sheets*, (issued January 15, 2019).

<sup>4</sup> Exhibit 3, GO-2019-0115, *Spire East ISRS Appendix A - January Actuals Update*, (filed February 25, 2019); and Exhibit 4, GO-2019-0116, *Spire West ISRS Appendix A - January Actuals Update*, (filed February 25, 2019).

<sup>5</sup> File No. GO-2019-0115, *Staff Recommendation* (filed March 15, 2019), paras. 4-6; and File No. GO-2019-0116, *Staff Recommendation* (filed March 15, 2019), paras. 4-6.

<sup>6</sup> File No. GO-2019-0115, *Staff Recommendation* (filed March 15, 2019), paras. 4-6; and File No. GO-2019-0116, *Staff Recommendation* (filed March 15, 2019), paras. 4-6.

<sup>7</sup> File Nos. GO-2019-0115 and GO-2019-0116, *Objections to Spire Missouri Inc.’s Applications and Petitions and Request for an Evidentiary Hearing*, (filed March 15, 2019).

<sup>8</sup> File Nos. GO-2019-0115 and GO-2019-0116, *Objections to Spire Missouri Inc.’s Applications and Petitions and Request for an Evidentiary Hearing*, (filed March 15, 2019), paras. 8-10.

eligible.<sup>9</sup> Additionally, Public Counsel objected to Spire Missouri's method of calculating the ISRS costs arguing that a portion of the administrative and general costs (the overhead costs) included in the ISRS request may already be recovered in rates.<sup>10</sup> Public Counsel also joined Staff's objection to the Old ISRS Request.

On March 20, 2019, Staff filed a motion to dismiss the Old ISRS Request portion of the applications for lack of jurisdiction.<sup>11</sup> Public Counsel supported Staff's request and Spire Missouri opposed the request.

On April 1, 2019, the parties identified the following issues for the hearing:

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?

B. 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?

C. How should income taxes be calculated for purposes of developing the ISRS revenue requirement in these cases?<sup>12</sup>

The Commission held an evidentiary hearing on April 3-4, 2019. During the course of the hearing the parties settled the issues regarding income taxes and included overhead. Stipulation and agreements were filed after the hearing and are addressed below.

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<sup>9</sup> File Nos. GO-2019-0115 and GO-2019-0116, *Objections to Spire Missouri Inc.'s Applications and Petitions and Request for an Evidentiary Hearing*, (filed March 15, 2019), paras. 11-14.

<sup>10</sup> See, *Direct Testimony of Robert E. Schallenberg* and *Direct Testimony of John A. Robinett*.

<sup>11</sup> File No. GO-2019-0115, *Motion to Dismiss Portion of Spire West's ISRS Application that is Under Review by the Western District Court of Appeals*, (filed March 20, 2019); and File No. GO-2019-0116, *Motion to Dismiss Portion of Spire East's ISRS Application that is Under Review by the Western District Court of Appeals*, (filed March 20, 2019).

<sup>12</sup> *List of Issues, List and Order of Witnesses, Order of Cross-Examination, and Order of Opening Statements*, (filed April 1, 2019), p. 2.

## II. Post-Hearing Evidence and Briefs

The Commission also received and admitted without objection Exhibit 104, provided by Staff. Exhibit 104 is a breakdown of the claimed savings that resulted from Spire Missouri's cost avoidance studies by service area and by New ISRS Request and Old ISRS Request as requested at the hearing. Additionally, Exhibit 104 contains a reconciliation of Staff and Spire Missouri's positions concerning the recovery of the Old ISRS Request and the New ISRS Request.

The parties filed simultaneous briefs on April 15, 2018. Additionally, the USW Local 11-6 ("Union") and the Missouri Energy Development Association ("MEDA") filed motions asking permission to file briefs as *amicus curiae*. Section 4 CSR 240-2.075(11) allows a party to petition to the Commission for leave to file an *amicus curiae* brief.

The Union stated that for collective bargaining purposes it represents 850 employees of Spire Missouri involved in the maintenance and construction of the distribution facilities used to deliver natural gas to Spire Missouri's customers and that it participated in Spire Missouri's last general rate case. The Union states that it should be allowed to file this brief because various ratemaking and regulatory decisions affect its members.

MEDA also filed a motion seeking permission to file an *amicus curiae* brief. MEDA is an incorporated trade association whose member companies include Union Electric Company, d/b/a Ameren Missouri, Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, Summit Natural Gas of Missouri, and Spire Missouri. MEDA states that its interest in filing this brief is to address the "policy issue of importance to all regulated utilities in the State of Missouri, that is, whether a pending appeal of a

different case necessarily divests the Commission of jurisdiction to consider similar costs and investments with certain features addressed in a new case . . . .”<sup>13</sup> Further, MEDA argues that it should be allowed to file the brief to assist the Commission in reaching a well-informed decision on the legal issues presented by the motions currently pending.

Both the Union and MEDA have met the criteria set out in the rule for filing an *amicus curiae* brief. The Commission will grant leave to file the briefs. The briefs attached to the requests for leave to file are accepted.

Following the conclusion of the evidentiary hearing, the Commission determined no party had provided a calculation as to what that party believed was the specific cost of the replacement of ineligible plastic mains and service lines to be removed from Spire Missouri’s ISRS cost recovery, even though all parties to the case had access to the work orders and other information necessary to identify that cost.<sup>14</sup> On April 24, 2019, the Commission directed Staff to report the results from the calculations of the amount of pretax revenues related to the replacement of cast iron or bare steel material in Spire Missouri’s ISRS request for the period of July 1, 2018, through January 31, 2019.<sup>15</sup> These calculations were directed to be made using the same methodology Staff used in the 2018 ISRS cases<sup>16</sup> to remove the cost of the replacement of ineligible plastic mains and service

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<sup>13</sup> File Nos. GO-2019-0115 and GO-2019-0116, *Petition of the Missouri Energy Development Association for Leave to File Brief as Amicus Curiae*, (filed April 15, 2019), para. 3.

<sup>14</sup> Ex. 4, Direct Testimony of Wesley E. Selinger, pp. 4-5; and Tr. pp. 205 (Spire Missouri’s witness, Rob C. Atkinson, testified that this calculation was “relatively easy.”) and 265 (Public Counsel’s witness, John A. Robinett, testified that Public Counsel had the work order authorizations that Spire Missouri provided). The ISRS statute specifically requires the utility to provide “a copy of its petition, its proposed rate schedules, and its supporting documentation” upon filing its petition. (Subsection 393.1014.1, RSMo.)

<sup>15</sup> Staff’s witnesses testified that Staff had reviewed a sampling of the work orders and made some calculations with regard to removing what it considered ineligible plastic from certain types of work orders. (Transcript pp. 187-188 and 204-205; and Exhibits 100 and 101, *Staff Direct Report*, pp. 4 and 11-12).

<sup>16</sup> File Nos. GO-2018-0309 and GO-2018-0310.

lines from Spire Missouri's ISRS cost recovery.<sup>17</sup> The order also afforded the other parties an opportunity to file objections, responses, or alternate calculations to that report and afforded all parties the opportunity to file cross responses.

On April 25, 2019, Staff filed its verified *Staff Report*, and on April 29, 2019, Staff filed a verified *Notice of Correction to Staff Report*. The report and the notice of correction have been marked as Exhibit 105 and Exhibit 106, respectively. Responses to Exhibits 105 and 106 were received on April 30, 2019, from Spire Missouri and the Public Counsel.<sup>18</sup> Spire Missouri stated that, although it disagreed with disallowing the plastic components, as corrected on April 29, 2019, Staff had accurately calculated the amounts as directed by the Commission.<sup>19</sup> Spire Missouri also requested that if the Commission denied ISRS recovery of these costs, that the Commission grant accounting authority to defer any depreciation, return, and taxes associated with such costs incurred, beginning July 1, 2018, for potential recovery in the next rate cases.

On April 30, 2019, Public Counsel objected to Exhibits 105 and 106 on the grounds that the admission of these calculations on an expedited basis after the conclusion of the hearing would be a violation of Public Counsel's (and Spire Missouri's) constitutional rights to due process. However, the Commission heard testimony that the parties had

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<sup>17</sup> In those earlier cases, Staff reviewed all of the work order authorizations provided by the Company to determine the feet of main and service lines replaced and retired by the type of pipe (plastic, cast iron, steel, etc.). Staff applied the actual individual plastic main and service line percentages to the work order cost to determine the value of the replacement of plastic pipe for the work order. Staff did not remove any amounts for work orders that were associated with relocations required by a governmental authority, encapsulation work orders, and meter and regulator replacement work orders. For work order authorizations that Spire Missouri did not provide, or that included estimations, Staff calculated an average of plastic mains and service lines replaced for the work order authorizations that had actual information provided and applied that percentage to work order authorizations that were not provided or estimated. (File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order*, (issued September 20, 2018), Finding of Fact Nos. 21 and 22.)

<sup>18</sup> Public Counsel's verified response was marked as Exhibit 207.

<sup>19</sup> *Spire Missouri Inc's Response to Staff Report and Request for Accounting Authorization to Defer Amounts Excluded From ISRS Charges for Consideration in Its Next Rate Cases*, (filed April 30, 2019), para 3.



this data readily available and that these calculations were relatively simple to make.<sup>20</sup> There were also many arguments and references to these calculations and the methodology that Staff used to make similar calculations in the Report and Order in File Nos. GO-2018-0309 and GO-2018-0310 that the Commission took official notice of without objection.<sup>21</sup>

In its April 30<sup>th</sup> response, Public Counsel also raised two substantive issues with Staff's calculations. First, Public Counsel stated an adjustment should be made to the blanket work orders to remove the plastic in the service renewals. Second, Public Counsel argued that, with regard to Spire Missouri East, Staff applied all of the costs of service transfers and Staff did not calculate any disallowance for the inclusion of ineligible plastic.<sup>22</sup> Public Counsel provided a "total reduction to the gross plant additions for mains found in the revenue requirement for the Spire Missouri East service territory"<sup>23</sup> and recommended reductions to the Spire Missouri East revenue requirement.<sup>24</sup> Spire Missouri filed a response to Exhibit 207, reiterating its arguments against the proposed adjustments.<sup>25</sup>

So that the Commission could be confident that Staff would file an additional response to Public Counsel, the Commission directed Staff to answer specific questions in its reply to Public Counsel's issues.<sup>26</sup> Staff replied on May 1, 2019, with an explanation

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<sup>20</sup> Tr. pp. 205, 209-210, and 265; and Ex. 8, Direct Testimony of Wesley E. Selinger, pp. 4-5.

<sup>21</sup> In fact, Public Counsel offered at hearing over 4000 pages containing all the work orders provided to the parties by Spire Missouri with the necessary information. (Tr. pp. 247-254). Reference and discussion of the previous cases were also made at Tr. pp. 9, 11, 12, 22, 25, 44, 66, 67, 90, 169, and 340.

<sup>22</sup> Ex. 207, *Response to Commission Order Directing Filing and Staff Report*, paras. 7-12.

<sup>23</sup> Ex. 207, *Response to Commission Order Directing Filing and Staff Report*, para. 11.

<sup>24</sup> Ex. 207, *Response to Commission Order Directing Filing and Staff Report*, para. 12.

<sup>25</sup> *Reply of Spire Missouri Inc. to OPC's Response to Commission Order and Staff Report*, (filed May 1, 2019).

<sup>26</sup> *Order Directing Response*, (issued May 1, 2019).

about its calculations for service renewals in the blanket work orders and the transfers issue.<sup>27</sup> Staff stated that it had “erroneously included 100% recovery of service transfers work orders” and made a further adjustment of 6.36% (\$300,067) to remove the recovery for the plastic in those work orders.<sup>28</sup>

On May 2, 2019, Public Counsel filed two additional responses. The first of these responses was a verified response that has been marked as Exhibit 208.<sup>29</sup> In that response, Public Counsel acknowledges the “procedural limitations” involved in the expedited nature of an ISRS proceeding.<sup>30</sup> With that acknowledgement, Public Counsel stated that with regard to the blanket work orders, and for the purposes of the current cases only, it does not contest Staff’s adjustments further.<sup>31</sup> Public Counsel also stated that it accepted Staff’s corrected adjustment with one small exception relating to the net property tax calculation.<sup>32</sup>

Spire Missouri also replied to Staff’s further corrections in Exhibit 107. Spire Missouri opposed the further adjustments provided in Exhibit 107 and urged the Commission to reject those adjustments.

ISRS cases are an expedited process to allow the utility to collect a surcharge for very specific utility plant additions. As such, the procedure does not always follow the same path as new and complex issues are raised. As stated before, at the conclusion of

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<sup>27</sup> *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, (filed May 1, 2019). This verified response has been marked as Exhibit 107.

<sup>28</sup> Exhibit 107, *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, p. 2.

<sup>29</sup> *Response to Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East and Reply of Spire Missouri Inc. to OPC’s Response to Commission Order and Staff Report*, (filed May 2, 2019). This verified response was marked as Exhibit 208.

<sup>30</sup> Ex. 208, para. 14.

<sup>31</sup> Ex. 208, para. 14.

<sup>32</sup> Ex. 208, para. 7.

this hearing and after review of the evidence, the Commission determined that no party had provided a calculation as to what that party believed was the cost of the replacement of ineligible plastic mains and service lines to be removed from Spire Missouri's ISRS cost recovery, even though all parties to the case had access to the work orders and other information necessary to identify that cost.<sup>33</sup> The Commission further determined that that calculation was necessary to make a final decision in accordance with the ISRS statute. The parties were given an opportunity to respond to the verified calculations provided and to provide their own calculations. The parties were further given the opportunity to reply to those responses. The objections are overruled and the Commission admits Exhibits 105,106, 107, 207, and 208 into evidence.

Public Counsel also objects to Spire Missouri's request for an accounting authority order (AAO).<sup>34</sup> Public Counsel argued that it is not an AAO application in accordance with Commission rules,<sup>35</sup> and is procedurally inappropriate in this ISRS for at least two reasons. First, the procedural requirements necessary to ensure due process of law when considering a utility's request for an AAO will greatly exceed the time remaining in this case. Second, Spire Missouri has failed to submit the evidence necessary for the Commission to consider granting an AAO application. The Commission agrees with Public Counsel. Spire Missouri's request for an accounting authority order is denied. If Spire Missouri believes such a mechanism is needed, it may file a separate application in accordance with Commission rules.

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<sup>33</sup> Ex. 4, Direct Testimony of Wesley E. Selinger, pp. 4-5; and Tr. pp. 205 and 265. See also, Section 393.1014.1, RSMo (2016).

<sup>34</sup> *The Office of the Public Counsel's Response to Spire Missouri Inc.'s Response to Staff Report and Request for Accounting Authorization to Defer Amounts Excluded from ISRS Charges for Consideration in Its Next Rate Cases*, (filed May 2, 2019).

<sup>35</sup> 4 CSR 240-2.060.

### III. Stipulation and Agreements

#### Stipulation and Agreement on Income Taxes

In its original recommendation, Staff did not include an amount for income taxes on the theory that the Company's current tax liability was offset by the tax deductions from the installation of ISRS facilities.<sup>36</sup> Spire Missouri objected to Staff's proposed disallowance. Spire Missouri explained that when it made its first ISRS filing the income tax issue arose but a settlement agreement was reached where the Company agreed to "split the difference" in exchange for the parties processing these cases on an expedited basis. However, in recent cases Public Counsel has objected to some aspect of the ISRS filings and requested a hearing. Thus, Spire Missouri once again included the entire amount that it believed was recoverable.

Staff and Spire Missouri reached a settlement agreement similar to the past practice where 50% "of the entire income tax gross-up that would be derived from multiplying the revenue requirement before gross-up . . . by the marginal income tax rate"<sup>37</sup> would be included in Total ISRS Revenues. Additionally, the Staff and Spire Missouri agreed to meet within 30 days after the effective date of the Report and Order in this case to try to reach a long-term solution for this issue. Public Counsel did not sign the agreement, but did not object.

Commission rule 4 CSR 240-2.115(2)(B) allows nonsignatory parties seven days to object to a nonunanimous stipulation and agreement. More than seven days have

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<sup>36</sup> See, File Nos. GO-2019-0115 and GO-2019-0116, *Staff Recommendation*, (filed March 15, 2019), *Memorandum*, p. 10; Exs. 100 and 101, *Staff Direct Report*, pp. 12-13; and Ex. 5, *Direct Testimony of Chuck J. Kuper*.

<sup>37</sup> File Nos. GO-2019-0115 and GO-2018-0116, *Stipulation and Agreement Regarding Income Tax Issue*, (filed April 8, 2019), para. 3.

passed and no objections were received. The Commission has considered the stipulation and agreement regarding income taxes and finds it to be a reasonable resolution of the income tax issue. The Commission will approve the agreement. The Commission incorporates the provisions of the *Stipulation and Agreement on Income Taxes* into this order as if fully set forth herein and directs the signatories to comply with its terms.

### **Stipulation and Agreement Regarding Overheads**

One of Public Counsel's objections to the Petitions was to the method of calculating the ISRS costs. Public Counsel argued that a portion of the administrative and general costs (the overhead costs) may already be recovered in rates.<sup>38</sup> After the hearing, the parties reached a unanimous settlement agreement on this issue.

The agreement states "that no adjustment shall be made in these ISRS cases relating to the overhead costs assigned to the Company's ISRS projects"<sup>39</sup> but that in a rate case Public Counsel and Staff are not precluded from challenging the prudence of overhead costs being assigned to the ISRS projects. The parties also agreed to begin meeting within 45 days of the Commission's order approving the stipulation and agreement to more fully discuss the method Spire Missouri uses to allocate overhead to the ISRS projects.<sup>40</sup>

The Commission has considered the *Stipulation and Agreement Regarding Overheads* and finds it to be a reasonable resolution of the issue in this case. The Commission will approve the agreement. The Commission incorporates the provisions

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<sup>38</sup> See, Exhibit 201, *Direct Testimony of Robert E. Schallenberg*; and Exhibit 200, *Direct Testimony of John A. Robinett*.

<sup>39</sup> File Nos. GO-2019-0115 and GO-2018-0116, *Stipulation and Agreement Regarding Overheads*, (filed April 11, 2019), para. 3.

<sup>40</sup> File Nos. GO-2019-0115 and GO-2018-0116, *Stipulation and Agreement Regarding Overheads*, (filed April 11, 2019), para. 4.

of the agreement into this order as if fully set forth herein and directs the parties to comply with its terms.

#### **IV. Motion to Dismiss the “Old ISRS Request” for Lack of Jurisdiction**

On March 20, 2019, Staff requested the Old ISRS Request portion of the Petitions be dismissed for lack of jurisdiction.<sup>41</sup> Staff argued that the Commission lacks jurisdiction to hear the Old ISRS Request because the Commission’s previous orders in File Nos. GO-2018-0309 and GO-2018-0310 are on appeal at the Missouri Court of Appeals, Western District, and therefore, the Court of Appeals has sole jurisdiction over these ISRS charges.<sup>42</sup>

Public Counsel also objected to the applications because Spire Missouri included the Old ISRS Request. Public Counsel argued that if Spire Missouri’s appeal is successful, then it would likely be able to recover the Old ISRS Request during the remand proceedings, thus creating a double recovery of those costs.<sup>43</sup>

Spire Missouri responded to the objections, arguing that the Commission maintains jurisdiction because Spire Missouri is neither renewing a previous request nor seeking reconsideration of the Commission’s previous decisions.<sup>44</sup> Spire Missouri argues that in its previous decision, the Commission did not determine that these costs were ineligible to be recovered through an ISRS. Spire Missouri argues instead that the Commission found Spire Missouri had merely not met its burden of showing these costs

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<sup>41</sup> File No. GO-2019-0115, *Motion to Dismiss Portion of Spire West’s ISRS Application that is Under Review by the Western District Court of Appeals*, (filed March 20, 2019); and File No. GO-2019-0116, *Motion to Dismiss Portion of Spire East’s ISRS Application that is Under Review by the Western District Court of Appeals*, (filed March 20, 2019).

<sup>42</sup> Missouri Court of Appeals, Western District, Docket No. WD82302 (consolidated with Docket No. WD82373).

<sup>43</sup> File Nos. GO-2019-0115 and GO-2019-0116, *Objections to Spire Missouri Inc.’s Applications and Petitions and Request for an Evidentiary Hearing*, (filed March 15, 2019), paras. 6-7.

<sup>44</sup> File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order* (issued September 20, 2018).

were eligible for ISRS recovery. Now, Spire Missouri comes forward with additional evidence in the form of avoided cost studies and seeks to implement a new ISRS on a going forward basis (not reaching back to the period prior to the current applications being filed).<sup>45</sup>

Spire Missouri also argues four other points. First, Spire Missouri states that barring a utility from seeking recovery of an ISRS investment that meets the statutory criteria because such costs were not previously allowed in a prior Commission Order now under appeal would impermissibly add a new eligibility condition to the statutory language. Second, Spire Missouri argues that the Commission often maintains jurisdiction to hear rate issues that are on appeal.<sup>46</sup> Third, Spire Missouri argues that to dismiss this part of the petition would be unduly punitive toward the Company in that it would be punished for having appealed the Commission's decision. And finally, Spire Missouri argues that Staff's arguments are inconsistent with the method of evaluating whether to dismiss a cause of action (*i.e.* whether a petition has stated a cause of action that can be acted upon).

Staff filed a reply in which it dismissed most of Spire Missouri's arguments under the theory that if the Commission lacks jurisdiction, Spire Missouri's other arguments are moot; without jurisdiction, the Commission cannot hear the matter. As to the fact that the Commission often retains jurisdiction in general rate proceedings to make determinations about items that are on appeal, Staff argues that there is a distinction between a general rate case, where the Commission recognizes all of a utility's capital expenditures, whether

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<sup>45</sup> Exs. 1, 2, 3, and 4.

<sup>46</sup> Citing the recent rate cases File Nos. GR-2017-0215 and GR-2017-0216 in which the Commission heard Spire Missouri's general rate case including the ISRS issues that were on appeal. Spire Missouri also cites to the *Missouri American Water Company* case, 516 S.W.3d 823 (Mo. banc 2017).

ISRS eligible or not, and an ISRS case, where the Commission merely allows early recognition, between general rate cases, and thus incentivizes infrastructure investment. Staff argues that once the general rate case is considered, the denial of ISRS recognition is necessarily mooted because there is no further remedy available.

Conspicuously missing from Spire Missouri's response to Staff's motion is case law to support Spire Missouri's argument that the Commission maintains jurisdiction even though these same issues and facts are on appeal. Spire Missouri cites only to cases regarding the mootness doctrine<sup>47</sup> and to case law regarding the treatment of a motion to dismiss for failure to state a cause of action on which relief may be granted not relating to jurisdiction.<sup>48</sup> However, Staff's motion to dismiss also lacks citations to Commission-specific case law. Instead, Staff's case law arguments compare the Commission's jurisdiction, or lack thereof, to that of a trial court once a case is appealed.<sup>49</sup>

One case that is more on-point that Staff failed to rely on in its motion to dismiss, but incorporated in its brief, is the *Missouri Cable Telecommunications Association*<sup>50</sup> case. In that case, the Commission approved a settlement agreement of the issues that were on appeal. The Court found that approving the settlement agreement was tantamount to modifying its original order that was on appeal. The Missouri Court of Appeals, Western District, stated, "If review of a PSC order is pending before a . . . court,"<sup>51</sup>

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<sup>47</sup> *Response in Opposition to Staff's Motion to Dismiss*, (filed March 25, 2019), paras. 14-15.

<sup>48</sup> *Response in Opposition to Staff's Motion to Dismiss*, (filed March 25, 2019), paras. 18-19.

<sup>49</sup> Staff cites to *Reynolds v. Reynolds*, 109 S.W.3d 258, 269-71 (Mo. App., W.D. 2003); *State ex rel. Stickelber v. Nixon*, 54 S.W.3d 219, 223 (Mo. App., W.D. 2001); and *State ex rel. Steinmeyer v. Coburn*, 671 S.W.2d 366, 371 (Mo. App., W.D. 1984).

<sup>50</sup> *State ex rel. Missouri Cable Telecommunications Association v. Missouri Pub. Serv. Commission*, 929 S.W.2d 768, 772 (Mo. Ct. App. 1996).

<sup>51</sup> Decisions of the Commission were previously appealed first to circuit court. That law, section 386.510, RSMo., was amended in 2011, so that appeals of Commission decisions go directly to the Missouri Court of Appeals.



the PSC may not enter a modified, extended or new order.”<sup>52</sup> Spire Missouri argues, however, it is not requesting a modification, extension, or new order, but is asking for a determination based on new and different evidence to be implemented on a prospective basis. Spire Missouri attempts to distinguish its request from a request that would modify, extend, or make a new order in the previous case by citing to the *KCP&L Carrying Costs*<sup>53</sup> case.

The *KCP&L Carrying Costs* is distinguishable from this case. In that case, the Court said that the Commission had jurisdiction to determine the carrying costs that it had previously ordered to be included in rates even though the original order approving the inclusion of carrying costs was on appeal. The Court stated the Commission had jurisdiction to do this because it was merely implementing its prior order (that remained in effect pending the appeal) and was not attempting to alter or modify the order under review. The court also made a point of stating that the *KCP&L Carrying Costs* case was a new proceeding and not an order issued in the same proceeding, which also distinguished it from the *Missouri Cable Association* case. Spire Missouri relies on the fact that this is a new ISRS proceeding to distinguish its Old ISRS Request.

Spire Missouri admits in its applications that the Old ISRS Request is based on the same costs and issues that the Commission previously denied.<sup>54</sup> Spire Missouri argues,

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<sup>52</sup> *State ex rel. Missouri Cable Telecommunications Association v. Missouri Pub. Serv. Commission*, 929 S.W.2d 768, 772 (Mo. Ct. App. 1996).

<sup>53</sup> *In re KCP & L Greater Missouri Operations Co.*, 408 S.W.3d 175 (Mo. Ct. App. 2013), as modified (June 25, 2013).

<sup>54</sup> Ex. 1, File No. GO-2019-0115, Verified Application and Petition of Spire Missouri, Inc. to Change its Infrastructure System Replacement Surcharge for It's (*sic*) Spire Missouri East Service Territory and Tariff Revision, (filed January 14, 2019), para. 7; and Ex. 2, File No. GO-2019-0116, Verified Application and Petition of Spire Missouri, Inc. to Change its Infrastructure System Replacement Surcharge for It's (*sic*) Spire Missouri West Service Territory and Tariff Revision, (filed January 14, 2019), para. 7.

however, that it has provided new and additional evidence the Commission needs to approve those items as set out by the Commission in its Report and Order.<sup>55</sup>

In the Report and Order in File Nos. GO-2018-0309 and GO-2018-0310, the Commission specifically found “that Spire Missouri’s plastic pipe replacements were not worn out or deteriorated”<sup>56</sup> and that Spire Missouri had not provided “sufficient information to determine whether any plastic pipe being replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.”<sup>57</sup> Further, Spire Missouri specifically appealed the Commission’s decision that these costs were not eligible,<sup>58</sup> so that is the issue vested in the Court of Appeals. Thus, Spire Missouri is arguing that the Commission would not be altering or modifying its previous decision or making a new decision. However, it is asking the Commission to make a new decision on the same costs that it previously found ineligible for ISRS recovery.

Spire Missouri also argues that this ISRS proceeding is a rate proceeding like a general rate case, where the Commission regularly considers items on appeal during the

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<sup>55</sup> In its *Report and Order* at pages 15-16 in File Nos. GO-2018-0309 and GO-2018-0310, 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.

<sup>56</sup> File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order* (issued September 20, 2018), p. 14.

<sup>57</sup> File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order* (issued September 20, 2018), p. 15. The *Report and Order* also specifically refers to the “*ineligible* plastic pipe replacements” and “the *ineligible* costs” which seems to be a determination that these projects and costs are ineligible for ISRS recovery.

<sup>58</sup> Spire Missouri’s Notice on Appeal at the Western District says it is appealing the Commission’s Report and Order because, “the Commission erroneously determined that certain costs incurred by Spire Missouri, Inc. were not eligible for recovery through its ISRS mechanism because some plastic facilities were retired or replaced in connection with various ISRS projects.”

course of a general rate cases.<sup>59</sup> Rehearing the same ISRS cost issues in a new ISRS case is not an analogous situation to considering those same costs that may be under appeal in a rate case. In an ISRS case, the Commission is only deciding if, under the very specific criteria in the ISRS statutes, the costs proposed are eligible to be collected prior to a rate case being filed. However, in a rate case, the Commission is determining whether these pipe replacement expenses and costs may be included as revenue requirement or rate base, and be recovered through rates on a going forward basis.

Further, the ISRS statute requires the Commission, in the rate case, “to reset the ISRS to zero . . . incorporat[ing] in the utility's base rates . . . eligible costs previously reflected in an ISRS.”<sup>60</sup> Thus, in a general rate case the Commission would not be determining if the costs are ISRS eligible, which is the issue here and the issue on appeal. All of the costs, whether the Commission determined they were ISRS eligible or not, will be considered in a rate case. The determination in the ISRS case is not related to the general rate case except with regard to the accounting for what revenues have been received, the prudence of those costs, and, if not prudent, the potential refund of revenues collected.<sup>61</sup> The issues for Commission decision in an ISRS case and a general rate case are simply not the same issues, nor are the same facts required for the Commission to make a decision.

Spire Missouri also argues that the ISRS statute requires the Commission to hear the Old ISRS Request because the statute provides for the recovery of “eligible

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<sup>59</sup> For example, when an ISRS case is appealed and a general rate case is then filed the Commission regularly considers the same costs that were the subject of the ISRS in the rate case.

<sup>60</sup> Section 393.1015.6(1), RSMo (2016).

<sup>61</sup> Subsections 393.1015(5)c, (6), and (8), RSMo (2016).

infrastructure system replacements”<sup>62</sup> which includes gas utility plant projects that “[w]ere not included in the gas corporation’s rate base in its most recent general rate case.”<sup>63</sup> However, the statute also says that a gas corporation “may file a petition . . . for the recovery of costs for eligible infrastructure system replacements.”<sup>64</sup> The statute authorizes one filing, but does not necessarily authorize the repeated filing of petitions to recover costs that the Commission has already determined are ineligible.

The settled case law is that the Commission loses jurisdiction to the Court once an appeal has been filed and the Commission may not modify or alter its order that is being appealed and it may not issue a new order. The Commission maintains jurisdiction to implement its orders that are appealed and the Commission maintains jurisdiction to hear new cases on similar issues or new cases involving the same costs or revenues, such as in a rate case. Even though Spire Missouri has presented new evidence with regard to the Old ISRS Request, it is still asking the Commission to rehear the evidence from the prior case and to make a new order based on those costs that the Commission has already determined to be ineligible for ISRS recovery.

Staff’s motion to dismiss for lack of jurisdiction is granted. The portions of the applications dealing with the time period of October 1, 2017, through June 30, 2018, are dismissed.

## **V. Findings of Fact**

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed

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<sup>62</sup> Subsection 393.1012.1, RSMo 2016.

<sup>63</sup> Subsection 393.1009(3)(d), RSMo 2016.

<sup>64</sup> Subsection 393.1012.1, RSMo 2016.

greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Spire Missouri is an investor-owned gas utility providing retail gas service to large portions of Missouri through its two operating units or divisions, Spire Missouri East and Spire Missouri West.<sup>65</sup>

2. Spire Missouri is a “gas corporation” and a “public utility”, as each of those phrases is defined in Section 386.020, RSMo 2016.

3. Public Counsel “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”<sup>66</sup> Public Counsel “shall have discretion to represent or refrain from representing the public in any proceeding.”<sup>67</sup> Public Counsel participated in this matter.

4. Staff is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.<sup>68</sup>

5. The last general rate cases applicable to Spire Missouri are File Nos. GR-2017-0215 and GR-2017-0216 (“rate cases”), which were decided by the Commission by order issued on March 7, 2018, effective on March 17, 2018, with new rates effective on April 19, 2018.<sup>69</sup> Those rate cases included rate base investments

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<sup>65</sup> Exs.1 and 2, p. 2.

<sup>66</sup> Section 386.710(2), RSMo 2016; and 4 CSR 240-2.010(10) and (15) and 2.040(2).

<sup>67</sup> Section 386.710(3), RSMo 2016; and 4 CSR 240-2.010(10) and (15) and 2.040(2).

<sup>68</sup> 4 CSR 240-2.010(10) and (21) and 2.040(1).

<sup>69</sup> *Amended Report and Order*, In the Matter of Laclede Gas Company’s Request to Increase Its Revenues for Gas Service, GR-2017-0215, and In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy’s Request to Increase Its Revenues for Gas Service, GR-2017-0216, (issued March 7, 2018); *Order Approving Tariff in Compliance with Commission Order*, In the Matter of Laclede Gas Company’s Request to Increase Its Revenues for Gas Service, GR-2017-0215, and In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy’s Request to Increase Its Revenues for Gas Service, GR-2017-0216, (issued April 4, 2018).

made through September 30, 2017, and Spire Missouri's existing ISRS were reset to zero.<sup>70</sup>

6. Spire Missouri filed verified applications and petitions ("Petitions") with the Commission on January 14, 2019, for its East and West service territories, requesting an ISRS adjustment to recover eligible costs incurred in connection with infrastructure system replacements made during the period July 1, 2018 through November 30, 2018, with pro forma ISRS costs updated through January 31, 2019 (the New ISRS Request).<sup>71</sup>

7. Spire Missouri's Petitions also requested an ISRS adjustment to recover eligible costs incurred in connection with infrastructure system replacements made during the period October 1, 2017 through June 30, 2018 (the Old ISRS Request).<sup>72</sup>

8. The Old ISRS Request is the same costs from the same time period that were previously determined to be ineligible for ISRS recovery in Commission File Nos. GO-2018-0309 and GO-2018-0310.<sup>73</sup>

9. Sections 393.1009 through 393.1015, RSMo 2016, permit gas corporations to recover certain infrastructure system replacement costs outside of a formal rate case through a surcharge on its customers' bills. In conjunction with its Petitions, Spire Missouri filed tariff sheets that would generate a total annual revenue requirement for

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<sup>70</sup> Section 393.1015.6, RSMo 2016, and Exs. 1 and 2, p. 5, para. 11.

<sup>71</sup> Ex. 1 and 2, paras. 7-8.

<sup>72</sup> Ex. 1 and 2, paras. 7-8.

<sup>73</sup> Ex. 1, File No. GO-2019-0115, *Verified Application and Petition of Spire Missouri, Inc. to Change its Infrastructure System Replacement Surcharge for It's (sic) Spire Missouri East Service Territory and Tariff Revision*, (filed January 14, 2019), para. 7; and Ex. 2, File No. GO-2019-0116, *Verified Application and Petition of Spire Missouri, Inc. to Change its Infrastructure System Replacement Surcharge for It's (sic) Spire Missouri West Service Territory and Tariff Revision*, (filed January 14, 2019), para. 7.

Spire Missouri East in the amount of \$9,203,991<sup>74</sup> and for Spire Missouri West in the amount of \$9,769,606.<sup>75</sup>

10. Spire Missouri's estimates of capital expenditures for projects completed through January 2019 that it filed in its Petitions, were subsequently replaced with updated actual cost information.<sup>76</sup> Spire Missouri East's revenue requirement request in this proceeding, after updating the pro-forma months of December 2018 and January 2019 with actual information, is \$9,257,817. Spire Missouri West's revenue requirement request in this proceeding, after updating the pro-forma months of December 2018 and January 2019 with actual information, is \$8,754,194.<sup>77</sup>

11. The ISRS requests in the Petitions exceed one-half of one percent of Spire Missouri's base revenue levels approved by the Commission in Spire Missouri's most recent general rate case proceedings, and Spire Missouri's cumulative ISRS revenues, including the Petitions, do not exceed ten percent of the base revenue levels approved by the Commission in the last Spire Missouri rate cases.<sup>78</sup>

12. As set out earlier in this order, the Old ISRS Request portions of the Petitions are dismissed.<sup>79</sup>

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<sup>74</sup> Ex. 100, Staff Direct Report (Spire East), p. 1. This amount included the pro-forma amounts for January 2019 and was revised to \$9,257,817 with the filing of January actual costs. (Ex. 3, Appendix A, Schedule 8).

<sup>75</sup> Ex. 101, Staff Direct Report (Spire West), p. 1. This amount included the pro-forma amounts for January 2019 and was revised to \$8,751,036 with the filing of January actual costs. (Ex. 4, Appendix A, Schedule 8).

<sup>76</sup> Exs. 3 and 4.

<sup>77</sup> Ex. 8, Direct Testimony of Wesley E. Selinger, p. 3.

<sup>78</sup> Ex. 100, Staff Direct Report (Spire East), p. 9; and Ex. 101, Staff Direct Report (Spire West), p. 10. See, Section 393.1012.1, RSMo.

<sup>79</sup> Therefore, even though, similar evidence was presented for the Old ISRS Request portions of the Petitions, this Report and Order will cite to only the New ISRS Request portions of the evidence.

13. Spire Missouri attached supporting documentation to its Petitions for completed plant additions. This included detailed tables identifying the plant account/type of addition, work order number, funding project number, work order description, month of completion, addition amount, number of months, depreciation rate, accumulated depreciation, depreciation expense, retirement month, and retirement amount.<sup>80</sup>

14. Spire Missouri provided a description of the reason for the replacement broken into five categories: A. Service Replacements (i.e. renewals); B. Mains Replaced Under Maintenance "Mtce" - not related to a planned project, but emergency situations (i.e. worn out or deteriorated); C. Encapsulation/Clamping of Cast Iron Main; and D. Cathodic Protection Applied to Steel Mains Plant.<sup>81</sup> The Company also provided a summary of the total costs of each of the categories<sup>82</sup> and revenue requirement, depreciation, rate design, and tax calculations.<sup>83</sup>

15. Spire Missouri provided its project analysis result percentage, adjustment percentage, and revised addition amount resulting from its cost avoidance analysis discussed below.<sup>84</sup>

16. Spire Missouri attached tables to its Petitions identifying the state or federal safety requirement, with a citation to a state statute or Commission rule, mandating each work order.<sup>85</sup> The tables also included a reference to the paragraph of the definition of "Gas utility plant projects" found in Subsection 393.1009(5), RSMo.<sup>86</sup>

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<sup>80</sup> Exs. 1, 2, 3, and 4, Appendix A, Schedules 1, 2, and 3.

<sup>81</sup> Exs. 1, 2, 3, and 4, Appendix A, Schedule 2.

<sup>82</sup> Exs. 1, 2, 3, and 4, Appendix A, Schedule 5.

<sup>83</sup> Exs. 1, 2, 3, and 4, Appendix A, Schedules 8-18.

<sup>84</sup> Exs. 1, 2, 3, and 4, Schedules 1 and 2.

<sup>85</sup> Exs. 1, 2, 3, and 4, Appendix A, Schedules 6 and 7.

<sup>86</sup> Exs. 1, 2, 3, and 4, Appendix A, Schedule 6.



17. Spire Missouri is required to implement a program to replace cast iron and steel pipes.<sup>87</sup> The mandated cast iron and bare steel replacement programs began over 25 years ago and Spire Missouri has been actively engaged in replacing cast iron and bare steel since the 1950s.<sup>88</sup>

18. Historically, Spire Missouri had used a piecemeal approach to pipe replacement by replacing pipes when they were failing or about to fail. After careful analysis, in approximately 2010 the Company changed to a more systemic and economical approach where it retires pipes in place and installs new plastic pipes often in a different location. The new location is more accessible and efficient to maintain than the location of the old pipes which were often under a street.<sup>89</sup>

19. Spire Missouri's current neighborhood replacement program replaces or retires in place cast iron, steel, and plastic pipes.<sup>90</sup>

20. Some of the plastic pipes could not safely be reused due to Spire Missouri increasing the pressure for the gas lines as part of a systematic redesign.<sup>91</sup>

21. A majority of the costs that Spire Missouri is requesting to recover through its ISRS are related to Spire Missouri's systematic or strategic replacement program.<sup>92</sup>

22. Each year, under Spire Missouri's replacement program, Spire Missouri replaces between 60 and 65 miles of cast iron pipes in the Spire Missouri East territory

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<sup>87</sup> See 4 CSR 240.40-030(15).

<sup>88</sup> Ex. 200, Direct Testimony of John A. Robinett, Schedule JAR-D-5.

<sup>89</sup> File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order* (issued September 20, 2018), p. 5, Finding of Fact 11.

<sup>90</sup> File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order* (issued September 20, 2018), p. 5, Finding of Fact 12.

<sup>91</sup> Tr. p. 82, Ln. 12- 83, Ln. 13.

<sup>92</sup> Tr. p. 92.

and approximately 120 miles of cast iron and bare steel pipes in the Spire Missouri West territory.<sup>93</sup>

23. Spire Missouri uses its Distribution Integrity Management Program (“DIMP”) to rank the pipeline system according to potential risks.<sup>94</sup> The DIMP identifies the cast iron and bare steel facilities as posing higher risks of leaks or other incidents than other types of facilities reflecting their status as worn out or deteriorated.<sup>95</sup>

24. The cast iron pipes being replaced are sixty to one-hundred years old.<sup>96</sup> Cast iron pipes are unsafe to use because they tend to graphitize, making the pipe brittle and subject to cracking and leaking.<sup>97</sup>

25. The steel pipe being replaced is bare steel, meaning it is not cathodically-protected. Without this protection, steel pipes corrode relatively quickly and need to be replaced.<sup>98</sup> Bare steel corrodes, diminishing the wall thickness, which causes the possibility of leaks.<sup>99</sup>

26. The cast iron and bare steel pipes are in a worn out or deteriorated state.<sup>100</sup>

27. The bare steel and cast iron replacements are done subject to a Commission-approved cast iron and bare steel replacement program and have historically been found by the Commission to be in worn out or deteriorated condition.<sup>101</sup>

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<sup>93</sup> Tr. pp. 108-109.

<sup>94</sup> Tr. p. 129.

<sup>95</sup> Tr. pp. 79 and 129.

<sup>96</sup> Tr. pp. 90 and 139.

<sup>97</sup> Tr. p. 90.

<sup>98</sup> Tr. p. 257.

<sup>99</sup> Tr. p. 90.

<sup>100</sup> Tr. pp. 78 and 139.

<sup>101</sup> File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order*, (issued September 20, 2018); 4 CSR 240-40.030(15); and Ex. 200, Direct Testimony of John A. Robinett, Schedule JAR-D-5.

28. A joint statement by federal pipeline safety officials at the United States Department of Transportation (“USDOT”) and Pipeline and Hazardous Material Safety Administration (“PHMSA”) sent to the National Association of Regulatory Utilities Commissioners (“NARUC”) in December 2011, recommended the accelerated replacement of cast iron and bare steel facilities.<sup>102</sup> These officials and Spire Missouri’s witness reflected that such facilities are sufficiently worn out or deteriorated to justify expedited replacement and the utilization of special rate mechanisms such as ISRS to encourage the expedited replacement.<sup>103</sup>

29. It would be cost prohibitive to physically or visibly evaluate all pipe being replaced.<sup>104</sup> From an engineering perspective, however, with regard to pipeline replacement, depreciable life is a reasonable proxy for determining whether all pipe is worn out or deteriorated.<sup>105</sup> When the facilities are dug up, those facilities are regularly found to be in a worn out or deteriorated condition.<sup>106</sup> Spire Missouri’s witness, Rob C. Atkinson, a person with over 25 years of relevant experience at Spire Missouri (and its predecessor),<sup>107</sup> testified that he had never encountered a cast iron or bare steel pipe dug up that was not in some sort of a deteriorated state.<sup>108</sup>

30. Most of the cast iron pipes being replaced have already exceeded their useful services lives for depreciation purposes.<sup>109</sup> The useful service life for cast iron and steel mains is 80 years for Spire Missouri East and 50 years for Spire Missouri West.<sup>110</sup>

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<sup>102</sup> Tr. pp. 75-76.

<sup>103</sup> Tr. pp. 75-77.

<sup>104</sup> Ex. 6, Direct Testimony of Rob C. Atkinson, p.11.

<sup>105</sup> Ex. 6, Direct Testimony of Rob C. Atkinson, p.11.

<sup>106</sup> Tr. pp. 78 and 139.

<sup>107</sup> Ex. 6, Direct Testimony of Rob C. Atkinson, pp. 1-2.

<sup>108</sup> Tr. p. 78.

<sup>109</sup> Ex. 6, Direct Testimony of Rob C. Atkinson, p.12.

<sup>110</sup> Ex. 6, Direct Testimony of Rob C. Atkinson, p.12.

31. The useful life for plastic and copper is 70 years for Spire Missouri East.<sup>111</sup> For Spire Missouri West, the useful life for all mains (plastic, cast iron, and steel) is 50 years. The useful life for service lines is 44 years for Missouri East and 40 years for Missouri West.<sup>112</sup>

32. Some of the sections of mains replaced were plastic, but a majority of the plastic pipes being replaced are service lines.<sup>113</sup> Spire Missouri did not conduct a review to determine if the plastic pipe was worn out or deteriorated before replacing it. Spire Missouri did not attempt to calculate the amount of plastic pipe replaced that was worn out or in a deteriorated condition. The service lines are being replaced because Spire Missouri is replacing its entire system, not because they were worn out or in a deteriorated condition.<sup>114</sup>

33. The plastic mains being replaced are not past their useful service lives as the oldest plastic in Spire Missouri's system was installed in the early 1970s.<sup>115</sup>

34. Blanket work orders are work orders that cover a large number of tasks which remain open for an extended period and contain items that are not planned replacement projects.<sup>116</sup> To determine the amount of blanket work order costs that are not ISRS eligible, Spire Missouri categorized each task in the blanket work order as either ISRS eligible or ISRS ineligible, and then found the percentage of ISRS eligible to ISRS ineligible and applied the ISRS ineligible task percentage to the blanket work order total amounts to calculate the blanket work order costs that are not ISRS eligible.<sup>117</sup>

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<sup>111</sup> Tr. p. 127.

<sup>112</sup> Tr. pp. 127-128.

<sup>113</sup> Tr. pp. 123-124.

<sup>114</sup> Tr. p. 126.

<sup>115</sup> Tr. pp. 127-128.

<sup>116</sup> Exs. 100 and 101, Staff Direct Report, p. 11; and Ex. 107, p. 1.

<sup>117</sup> Ex. 100, pp. 11-12; and Ex. 101, p. 12.

35. Tasks that Spire Missouri considered ISRS eligible were mandated relocations, replacements due to leak repairs and corrosion inspections, and replacement of copper and cast iron pipe.<sup>118</sup> ISRS ineligible items included relocations at a customer's request, replacements due to excavation damage, replacement of plastic not related to a leak repair, and installation of new services.<sup>119</sup>

36. Staff agreed with Spire Missouri's blanket work order task categorizations and the eligibility of all the tasks included in the blanket work orders.<sup>120</sup> Public Counsel also indicated several times through its attorney and witness at the hearing that it is not challenging the blanket work orders in this case.<sup>121</sup>

37. A "service renewal occurs when an existing service line is replaced in its entirety with a new service line."<sup>122</sup> Service renewals could be done at either the request of the customer or in the course of a leak repair.<sup>123</sup>

38. A "service transfer occurs when an existing ratepayer's service line is connected to a new main requiring either the extension or retirement of part of the current service line."<sup>124</sup> If a service line will be reused after repair or replacement of the main, it must be transferred (attached) to the main to provide service.<sup>125</sup>

39. In an attempt to comply with guidance from the Commission in the previous ISRS cases, Spire Missouri conducted "avoided cost studies" consisting of an engineering

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<sup>118</sup> Exs. 100 and 101, p.12.

<sup>119</sup> Exs. 100 and 101, p.12.

<sup>120</sup> Exs. 1 and 2, Staff Direct Report, p. 12.

<sup>121</sup> Tr. pp. 54, 62, and 275. Public Counsel also stated in its brief at page 3, footnote 2, and in Exhibit 208, paragraph 18, that it was choosing not to contest whether the blanket orders were for worn out and deteriorated pipe.

<sup>122</sup> Ex. 200, Direct Testimony of John A. Robinett, p. 6; and Ex. 107, p. 1.

<sup>123</sup> Ex. 107, p. 1.

<sup>124</sup> Ex. 200, Direct Testimony of John A. Robinett, pp. 6-7.

<sup>125</sup> Tr. pp. 85-86.

analyses, by individual project, comparing the estimated costs of retiring the pipe, including plastic pipe, with an estimate of the cost of reusing the existing pipe.<sup>126</sup> Spire Missouri conducted this analysis for each project included in the ISRS filing, with the exception of relocation projects mandated by governmental entities, projects related to a pipe found to be in an angle of repose, and projects in which either no plastic pipe was abandoned or plastic pipe was abandoned because it was no longer necessary and not replaced.<sup>127</sup>

40. Spire Missouri applied the results of its avoided cost studies to the actual plant addition amount using a percentage adjustment. If the individual analysis showed that it was more costly to replace plastic pipe than to reuse it, Spire Missouri adjusted the actual addition amount by the percentage difference between the two estimates.<sup>128</sup>

41. The net cost avoidance according to this method was \$1.6 million for all four cases at issue (old and new for both Spire Missouri East and Spire Missouri West).<sup>129</sup> In Spire Missouri East territory the avoided cost studies for all projects show “savings” when replacing plastic pipe versus reusing plastic pipe. In Spire Missouri West territory reusing plastic pipe is more cost effective than replacing that pipe according to the avoided cost studies.<sup>130</sup>

42. Staff’s witnesses testified that Staff had reviewed a sampling of the work orders and made some calculations with regard to removing what it considered ineligible plastic from certain types of work orders.<sup>131</sup> Additionally, Staff witnesses testified that it

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<sup>126</sup> Ex. 6 Direct Testimony of Rob C. Atkinson, p. 4.

<sup>127</sup> Ex. 6 Direct Testimony of Rob C. Atkinson, pp. 4-5. For both Spire Missouri East and Spire Missouri West for the period of October 1, 2017 through January 31, 2019, this was more than 500 analyses.

<sup>128</sup> Ex. 8, Direct Testimony of Wesley E. Selinger, p. 5-6; and Exs. 1, 2, 3, and 4, Appendix A–Schedule 1.

<sup>129</sup> Ex. 104

<sup>130</sup> Ex. 104.

<sup>131</sup> Tr. pp. 187-188 and 204-205; and Exs. 100 and 101, *Staff Direct Report*, pp. 4 and 11-12.

was a relatively easy process to determine the cost associated with the plastic replacement.<sup>132</sup>

43. Staff calculated the amount of plastic in Spire Missouri's requested ISRS recovery using the same methodology that was applied in Spire Missouri, Inc.'s previous ISRS Cases (File Nos. GO-2018-0309 and GO-2018-0310).<sup>133</sup> Staff used the work order authorizations provided to determine the feet of main and service lines replaced and retired by the type of pipe (plastic, cast iron, steel, etc.).<sup>134</sup> Staff then applied the actual individual plastic main and service line percentages to the work order cost to determine the cost of the replacement of plastic pipe.<sup>135</sup> Staff did not remove any amounts for work orders that were associated with relocations required by a governmental authority, encapsulation work orders, angle of repose work orders, or regulator replacement work orders.<sup>136</sup>

44. In order to calculate the amount of ISRS ineligible plastic in the blanket work orders, Staff used the same calculation that was in Staff's direct filing.<sup>137</sup> Staff included 100% recovery of mandated relocations, replacements due to leak repairs and corrosion inspections, and replacement of copper and cast iron pipe. Staff's total ISRS revenues calculation did not include relocations at a customer's request, replacements due to excavation damage, replacement of plastic not related to a leak repair, and installation of new services.<sup>138</sup>

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<sup>132</sup> Tr. p. 205.

<sup>133</sup> Ex. 105, para. 3.

<sup>134</sup> Ex. 105, para. 3.

<sup>135</sup> Ex. 105, para. 3.

<sup>136</sup> Ex. 105, Staff Report, para. 3.

<sup>137</sup> Ex. 105, Staff Report, para. 4. Referring to Exs. 100 and 101, Staff Direct Report, pp. 11-12.

<sup>138</sup> Ex. 105, Staff Report, para. 4.

45. Staff indicated that if the Commission adopted the re-calculated ISRS revenue requirements as shown in Attachments “A” and “B” of Exhibit 105 (and the corrections in Exhibit 106), Staff will need to update the rate design (tariffed rates by customer class) for both Spire Missouri East and Spire Missouri West. As part of an updated rate design, Staff would also include the existing ISRS revenues that are currently in ISRS rates.<sup>139</sup>

46. Staff’s April 24, 2019, ISRS revenue requirement calculation inadvertently excluded several work orders.<sup>140</sup> On April 29, 2019, Staff filed Exhibit 106 with corrections.<sup>141</sup>

47. Staff’s April 29, 2019, calculations in Exhibit 106 were in error for Spire Missouri East (File No. GO-2018-0115) because Staff erroneously included 100% recovery of the service transfer work orders.<sup>142</sup> Staff corrected these numbers by removing 6.36% of the service transfers that were plastic.<sup>143</sup> This reduced the Spire Missouri East ISRS revenue requirement by \$360,067.<sup>144</sup>

48. The adjusted ISRS revenue requirement as calculated by Staff on May 1, 2019, results in Spire Missouri collecting total ISRS revenues in the amount of

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<sup>139</sup> Ex. 105, Staff Report, para. 6.

<sup>140</sup> Ex. 106, Notice of Correction to Staff Report, para. 1.

<sup>141</sup> Ex. 106, Notice of Correction to Staff Report, para. 2.

<sup>142</sup> Ex. 107, *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, p. 2.

<sup>143</sup> Ex. 107, *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, p. 2.

<sup>144</sup> Ex. 107, *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, p. 2.



\$6,425,514 for its Spire Missouri East service territory<sup>145</sup> and \$6,782,560 for its Spire Missouri West service territory.<sup>146</sup>

49. Spire Missouri agreed that after the April 29, 2019 correction,<sup>147</sup> Staff applied the methodology used in previous ISRS cases accurately.<sup>148</sup> However, Spire Missouri disagreed that the May 1, 2019 correction should be made.<sup>149</sup>

50. The Petitions affirmatively state that the infrastructure system replacements listed on Appendix A and Appendix B to the Petitions: a) did not increase revenues by directly connecting to new customers; b) are currently in service and used and useful; c) were not included in rate base in Spire Missouri's most recently completed general rate cases, Case Nos. GR-2017-0215 and GR-2017-0216, and d) replaced and/or extended the useful life of existing infrastructure.<sup>150</sup>

## VI. Conclusions of Law

A. Spire Missouri is a "gas corporation" and "public utility" as those terms are defined by Section 386.020, RSMo (2016).<sup>151</sup> Spire Missouri is subject to the

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<sup>145</sup> Ex. 107, *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, Attachment A – Spire Missouri East, ISRS Revenue Requirement Calculation – 2<sup>nd</sup> Corrected 5/1/2019.

<sup>146</sup> Exhibit 107, *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, Attachment A – Spire Missouri East, ISRS Revenue Requirement Calculation – 2<sup>nd</sup> Corrected 5/1/2019.

<sup>147</sup> Ex. 106.

<sup>148</sup> *Spire Missouri Inc's Response to Staff Report and Request for Accounting Authorization to Defer Amounts Excluded From ISRS Charges for Consideration in Its Next Rate Cases*, (filed April 30, 2019), para. 2.

<sup>149</sup> *Reply of Spire Missouri Inc. to OPC's Response to Commission Order and Staff Report*, (filed May 1, 2019).

<sup>150</sup> Exs. 1 and 2, p. 5, para. 10.

<sup>151</sup> Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

Commission's jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo.

B. The Commission has the authority under Sections 393.1009 through 393.1015, RSMo, to consider and approve ISRS requests such as those proposed in the Petitions.

C. Since Spire Missouri brought the Petitions, it bears the burden of proof.<sup>152</sup> The burden of proof is the preponderance of the evidence standard.<sup>153</sup> In order to meet this standard, Spire Missouri must convince the Commission it is "more likely than not" that its allegations are true.<sup>154</sup>

D. Section 393.1015.2(4), RSMo, states that "[i]f the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, the commission shall enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1009 to 393.1015".

E. Spire Missouri is required by Section 393.130, RSMo, to provide safe and adequate service.

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<sup>152</sup> "The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue". *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

<sup>153</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

<sup>154</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

F. Spire Missouri is required by state regulation 4 CSR 240.40-030(15) and the corresponding portions of 49 CFR part 192<sup>155</sup> and by Commission orders<sup>156</sup> to implement a program to replace cast iron and steel pipes.

G. Section 393.1012.1, RSMo, provides that a gas corporation may petition the Commission to change its ISRS rate schedule to recover costs for “eligible infrastructure system replacements.”

H. Eligible infrastructure system replacements are defined in Section 393.1009(3), RSMo., as:

Gas utility plant projects that:

- (a) Do not increase revenues by directly connecting the infrastructure replacement to new customers;
- (b) Are in service and used and useful;
- (c) Were not included in the gas corporation's rate base in its most recent general rate case; and
- (d) Replace or extend the useful life of an existing infrastructure[.]

I. As defined in Section 393.1009(5):

“Gas utility plant projects” may consist only of the following:

- (a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition;
- (b) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and
- (c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the gas corporation[.]

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<sup>155</sup> Commission rule 4 CSR 240-40.030 largely similar to the Minimum Federal Safety Standards contained in the Code of Federal Regulations at 49 CFR part 192.

<sup>156</sup> File No. GO-91-275, *Order Approving Main Replacement Program*, (Laclede Gas Company, n/k/a Spire Missouri East); and File No. GO-2002-50, *Order Approving Application*, (Missouri Gas Energy, n/k/a Spire Missouri West). See, Ex. 200, Schedules JAR-D-4 and JAR-D-5.

J. The Missouri Court of Appeals, Western District, has previously overturned the Commission's decision to allow the costs of plastic components of mains and service lines because they were an integral part of the replacement of the projects as a whole.

The Court stated:

Section 393.1009(5)(a) . . . clearly sets forth two requirements for component replacements to be eligible for cost recovery under ISRS: (1) the replaced components must be installed to comply with state or federal safety requirements and (2) the existing facilities being replaced must be worn out or in a deteriorated condition.<sup>157</sup>

The Court found that even though it may have been a prudent decision and may have enhanced safety, Laclede (now Spire Missouri) had not shown that there was a state or federal safety requirement mandating the replacement of plastic pipe that was not shown to be in worn out or deteriorated condition. Therefore, the Court stated that costs related to the plastic replacements were not eligible for early recovery under the ISRS statutes.

The Court clarified in footnote 5 of the opinion, however:

We recognize that the replacement of worn out or deteriorated components will, at times, necessarily impact and require the replacement of nearby components that are not in a similar condition. Our conclusion here should not be construed to be a bar to ISRS eligibility for such replacement work that is truly incidental and specifically required to complete replacement of the worn out or deteriorated components. However, we do not believe that section 393.1009(5)(a) allows ISRS eligibility to be bootstrapped to components that are not worn out or deteriorated simply because that [sic] are interspersed within the same neighborhood system of such components being replaced or because a gas utility is using the need to replace worn out or deteriorated components as an opportunity to redesign a system (*i.e.*,

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<sup>157</sup> *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 839 (Mo. Ct. App. 2017), reh'g and/or transfer denied (Dec. 14, 2017), transfer denied (Mar. 6, 2018) (footnote omitted).

by changing the depth of the components or system pressure) which necessitates the replacement of additional components.<sup>158</sup>

## VII. Decision

After the settlements are taken into consideration and excluding the Old ISRS Request, the remaining issues concern whether the expenditures made by Spire Missouri are eligible for recovery under the ISRS statute. In making a determination of eligibility for ISRS recovery, the Commission must look to the requirements of the statute. As the court of Appeals stated,

Section 393.1009(5)(a) . . . clearly sets forth two requirements for component replacements to be eligible for cost recovery under ISRS: (1) the replaced components must be installed to comply with state or federal safety requirements and (2) the existing facilities being replaced must be worn out or in a deteriorated condition.<sup>159</sup>

There is agreement that the gas utility plant contained in Spire Missouri's blanket work orders and its work orders for relocations may be considered ISRS eligible for purposes of this case.<sup>160</sup> However, Public Counsel objects to the recovery of the remaining costs on the basis that Spire Missouri has not shown that the expenditures were made in conjunction with replacing "existing facilities that have worn out or are in deteriorated condition."<sup>161</sup> This argument includes the Company's replacements of bare

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<sup>158</sup> *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 839 (Mo. Ct. App. 2017), reh'g and/or transfer denied (Dec. 14, 2017), transfer denied (Mar. 6, 2018).

<sup>159</sup> *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 839 (Mo. Ct. App. 2017), reh'g and/or transfer denied (Dec. 14, 2017), transfer denied (Mar. 6, 2018) (footnote omitted).

<sup>160</sup> Staff's testimony was that it agreed with Spire as to its categorization of ISRS eligible and not ISRS eligible tasks in the blanket work orders. Additionally, Public Counsel stated several times through its attorney and witness at the hearing that it is not challenging the blanket work orders in this case. (Tr. pp. 54, 62, and 275). Public Counsel also stated in its brief (at fn. 2, p. 3) and in Exhibit 208 that it was choosing not to pursue this issue.

<sup>161</sup> Section 393.1009(5)(a), RSMo 2016.

steel and cast iron mains and service lines, and the plastic components associated with those replacements.

Public Counsel argues that all of the costs are ineligible for ISRS recovery because the Company has failed to show that the plastic mains and service lines claimed were required by state or federal mandates and were in deteriorated or worn out condition;<sup>162</sup> and that Spire Missouri had also failed to show that any of the bare steel and cast iron infrastructure replacements were worn out or deteriorated.<sup>163</sup>

### **Bare Steel and Cast Iron**

With regard to replacements of cast iron and bare steel pipes, the evidence showed that Spire Missouri is required by state statute to provide safe and adequate service.<sup>164</sup> In its Petitions, Spire Missouri specifically identified for each individual project the state or federal safety requirement, with a citation to a state statute or Commission rule, mandating each work order.<sup>165</sup> The evidence showed that both Commission and federal regulations require Spire Missouri to implement a program to replace cast iron and bare steel pipes.<sup>166</sup> Thus, the Commission concludes that the cast iron and bare steel pipes were replaced to comply with state or federal safety requirements.

The second element that Spire Missouri must prove is that the bare steel and cast iron mains and service lines were worn out or in deteriorated condition. Public Counsel argues that Spire Missouri has not provided any evidence that the bare steel and cast

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<sup>162</sup> File Nos. GO-2019-0115 and GO-2019-0116, *Objections to Spire Missouri Inc.'s Applications and Petitions and Request for an Evidentiary Hearing*, (filed March 15, 2019), paras. 8-10.

<sup>163</sup> File Nos. GO-2019-0115 and GO-2019-0116, *Objections to Spire Missouri Inc.'s Applications and Petitions and Request for an Evidentiary Hearing*, (filed March 15, 2019), paras. 11-14.

<sup>164</sup> Section 393.130, RSMo (2016).

<sup>165</sup> See, Schedule 6 to Exhibits 1, 2, 3, and 4, citing the specific sections of the gas safety rules that are applicable.

<sup>166</sup> 4 CSR 240-40.030; and 49 CFR part 192.

iron mains and service lines were worn out or deteriorated.<sup>167</sup> Public Counsel points to Spire Missouri's testimony that it has replaced between 60 and 65 miles of cast iron pipes in the Spire East territory and 120 miles of cast iron and bare steel pipes in the Spire West territory.<sup>168</sup> Public Counsel argues that such extensive replacements cannot be due to the replacement of worn out or deteriorated pipe, but rather is "the product of a full-scale, top-to-bottom redesign of Spire's gas distribution system done to accommodate a change in pipeline material to plastic."<sup>169</sup>

Spire Missouri provided several types of evidence to prove that the cast iron and bare steel portions of its ISRS requests were worn out or in deteriorated condition. The first of Spire Missouri's evidentiary points is that the bare steel and cast iron replacements are done subject to a Commission-approved cast iron and bare steel replacement program and have historically been found by the Commission to be in worn out or deteriorated condition.<sup>170</sup> Public Counsel's evidence showed that the mandated cast iron and bare steel replacement programs began over 25 years ago and the Company has been actively engaged in replacing cast iron and bare steel since the 1950s.<sup>171</sup>

Additionally, the evidence showed that a joint statement by federal pipeline safety officials at the USDOT and PHMSA sent to NARUC in December 2011, recommended the accelerated replacement of cast iron and bare steel facilities.<sup>172</sup> These officials and Spire Missouri's witness reflected that such facilities are sufficiently worn out or

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<sup>167</sup> Exhibit 200, Direct Testimony of John A. Robinett, (filed March 29, 2019), pp. 4-6.

<sup>168</sup> Tr. p. 109, Ins. 1-5.

<sup>169</sup> File Nos. GO-2019-0115 and GO-2019-0116, *Brief of the Office of the Public Counsel*, (filed April 15, 2019), p.4.

<sup>170</sup> File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order*, (issued September 20, 2018); 4 CSR 240-40.030(15); and Ex. 200, Direct Testimony of John A. Robinett, Schedule JAR-D-5.

<sup>171</sup> Ex. 200, Direct Testimony of John A. Robinett, Schedule JAR-D-5.

<sup>172</sup> Tr. pp. 75-76.

deteriorated to justify expedited replacement and the utilization of special rate mechanisms such as ISRS to encourage the expedited replacement.<sup>173</sup>

Other evidence supporting a finding that cast iron and bare steel mains are worn out or deteriorated included testimony that cast iron and bare steel facilities are ranked by the Company's DIMP as posing higher risks of leaks or other incidents than other types of facilities reflecting their status as worn out or deteriorated.<sup>174</sup> Additionally, the testimony of Spire Missouri's witness was that when the facilities are dug up, those facilities are regularly found to be in a worn out or deteriorated condition.<sup>175</sup> Spire Missouri's witness further testified that he had never encountered a cast iron or bare steel pipe dug up that was not in some sort of a deteriorated state.<sup>176</sup> The evidence also showed that cast iron pipes are unsafe to use because they are subject to cracking and leaking, and the steel pipe being replaced is bare and not cathodically-protected, causing those pipes to corrode relatively quickly and requiring their replacement.<sup>177</sup>

Another factor in determining that cast iron and bare steel pipe is worn out or in deteriorated condition is the age of that pipe. The testimony in this case supports that most of the cast iron mains being replaced have exceeded their useful service lives for depreciation purposes.<sup>178</sup>

When considered in combination, the totality of the evidence supports a finding by the Commission that the cast iron and bare steel pipe was worn out or in a deteriorated condition. The Commission concludes that the cast iron and bare steel pipes were

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<sup>173</sup> Tr. pp. 75-77.

<sup>174</sup> Tr. pp. 79 and 129.

<sup>175</sup> Tr. pp. 78 and 139.

<sup>176</sup> Tr. p. 78.

<sup>177</sup> Tr. p. 90.

<sup>178</sup> Ex. 6, Atkinson Direct, p. 12.



replaced to comply with state or federal safety requirements and were worn out or in a deteriorated condition. Thus, the Commission determines that the cast iron and bare steel pipes are eligible for cost recovery under ISRS.

### **Plastic Components of Mains and Service Lines**

With regard to the plastic components of the mains and service lines, the Commission again begins with the requirements of the statute. Spire Missouri must first prove the replacements satisfy the elements for ISRS eligibility, then, if eligible, the Commission will determine the amounts of that recovery. Spire Missouri must prove first, that its requests consist of “gas utility plant projects . . . installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition[.]”<sup>179</sup>

There was little, if any, evidence that the non-cast iron or bare steel components (plastic components) were in a worn out or deteriorated condition. In fact, the evidence generally showed that the plastic pipe was not worn out or in a deteriorated condition. The evidence showed that in approximately 2010, Spire Missouri changed from a piece meal approach to replacing its deteriorating infrastructure to a more systemic approach. With this systematic approach, Spire Missouri retires pipes in place and installs new plastic pipes often in a different location. Spire Missouri indicated that the new location is more accessible and efficient to maintain than the location of the old pipes which were often under a street.<sup>180</sup> Spire Missouri’s witness admitted that the replacement of plastic was part of the entire system replacement.<sup>181</sup> In other words, the plastic components,

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<sup>179</sup> Section 393.1009(5)(a).

<sup>180</sup> File Nos. GO-2018-0309 and GO-2018-0310, *Report and Order* (issued September 20, 2018), p. 5, Finding of Fact 11.

<sup>181</sup> Tr. p. 126.

whether part of the mains or service lines, are not being replaced because they are themselves in worn out or deteriorated condition, but because they are part of the systematic replacement of all the pipe.

Spire Missouri argues that the costs to replace the plastic components were less than the costs of reusing the plastic components and, therefore, there are no incremental costs of replacing the plastic. However, this argument does not align with the statutory requirements or the Court's interpretation of those requirements and is an inappropriate comparison.

The ISRS was not designed to allow early recovery of system-wide replacement of infrastructure, only the replacement of worn out or deteriorated infrastructure. Plastic components that are not otherwise worn out or deteriorated cannot become ISRS eligible as part of a systemic redesign.

In Footnote 5 of its decision, the Court of Appeals recognized that the replacement of worn out or deteriorated components “will, at times, necessarily impact and require the replacement of nearby components that are not in similar condition.”<sup>182</sup> The Court of Appeals specifically acknowledged that the statute allows for recovery of plastic components that were “truly incidental and specifically required to complete replacement of the worn out or deteriorated components.”<sup>183</sup> Spire Missouri interpreted Footnote 5 and the language in the Court's conclusions that the “costs did not satisfy the requirements found in the plain language in section 393.1009(5)(a)” to mean that as long

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<sup>182</sup> *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 839 (Mo. Ct. App. 2017), reh'g and/or transfer denied (Dec. 14, 2017), transfer denied (Mar. 6, 2018).

<sup>183</sup> *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 839 (Mo. Ct. App. 2017), reh'g and/or transfer denied (Dec. 14, 2017), transfer denied (Mar. 6, 2018).

as it could show the costs to replace were less than the cost of reusing plastic components, the replacements were recoverable under ISRS. This however, is an inaccurate interpretation of the Court's decision.

Spire Missouri's cost studies may show that it cost less to replace the plastic components than it cost to reuse them;<sup>184</sup> however, nothing in Spire Missouri's cost studies or other evidence proves that the plastic components being replaced were costs that could be recovered under ISRS.

While Spire Missouri compares the cost to replace plastic versus reusing plastic parts, the comparison is not sound. Spire Missouri's cost benefit analysis compares the wrong information, but even if it were used, the information would not be persuasive. Firstly, Exhibit 104 demonstrates that when the costs for projects completed during the New ISRS period in Spire West were totaled, it was more cost effective to reuse rather than replace the pipe.<sup>185</sup> Moreover, some of the plastic pipes could not safely be reused due to Spire Missouri increasing the pressure for the gas lines as part of a systematic redesign, the "reuse" comparison is misleading.<sup>186</sup>

Unlike the prior cases where Staff presented its methodology to determine the percentage of plastic, that calculation was not done initially in this case. However, like the prior cases, the same information was provided to and being evaluated by the parties; merely the final step of separating out the numbers for the plastic components was not

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<sup>184</sup> Whether the cost analysis shows that the decision to redesign its system was cost effective or that replacing the plastic components that were not worn out or deteriorated was a safety enhancement are prudence issues. The Commission is not making a judgement about the prudence of these replacements as prudence and eligibility for ISRS are not the same determination.

<sup>185</sup> Exhibit 104 shows an approximate savings in Spire's cost avoidance study of \$267,166.39 by not replacing plastic. "Case Nos. GO-2018-0310 and GO-2019-0116 both showed reusing pipe (Scenario 2) was more cost effective than replacing the pipe (Scenario 1)."

<sup>186</sup> Tr. p. 82, Ln. 12- 83, Ln. 13.

done. In order to separate the cost of the ISRS-ineligible plastic, from the cost of the ISRS-eligible parts of the system, the Commission directed its Staff to make the calculation using the same methodology Staff used in the 2018 ISRS cases to remove the cost of the replacement of ISRS-ineligible plastic mains and service lines. Staff completed these calculations and submitted Exhibits 105, 106, and 107.

Staff explained that it used the same methodology as in the previous ISRS cases to calculate the amount of plastic to remove. Staff used the work order authorizations provided by Spire Missouri to determine the feet of main and service lines replaced and retired by the type of pipe. Staff then applied the actual individual plastic main and service line percentages to the work order cost to determine the cost of the replacement of plastic pipe. Staff did not remove any amounts for work orders that were associated with relocations required by a governmental authority, encapsulation work orders, angle of repose work orders and regulator replacement work orders.

The Commission concludes that ineligible plastic cannot be made eligible by a systematic redesign. Therefore, in order to determine how much ineligible plastic is in a project the Commission will use the same methodology previously used for removing the cost of replacing ISRS-ineligible plastic components. The Commission also concludes that the appropriate ISRS revenue requirements are provided in Exhibit 107. Additionally, the appropriate rate design is what was provided by Staff based on the most recent rate case billing units and allocated using the traditional ISRS rate design, but revised to utilize the ISRS revenues, as updated to comply with the ISRS revenue requirements as set out in Exhibit 107, and approved in this Report and Order.

Further, as to Spire Missouri's request for an AAO, the end of an ISRS case is not the appropriate venue to request this relief. The Commission has rules and procedures in place that afford Spire Missouri an opportunity to request this type of relief that will allow a full and fair consideration of such a request. The Commission denies Spire Missouri's request for an AAO.

### **Summary**

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that that Spire Missouri has met, by a preponderance of the evidence, its burden of proof to demonstrate that the Petitions and supporting documentation comply with the requirements of Sections 393.1009 to 393.1015, RSMo, with regard to the blanket work orders and relocations ((5)(b) and (5)(c)), and with regard to the cast iron and bare steel portions of the projects. Each of these portions of the projects were found to be "gas utility plant projects." The Commission concludes that Spire Missouri shall be permitted to establish an ISRS to recover ISRS surcharges for these cases in the amounts set out in Exhibit 107, filed by Staff on May 1, 2019. The ISRS revenue requirement for Spire Missouri East is \$6,425,514<sup>187</sup> and for Spire Missouri West is \$6,782,560.<sup>188</sup> Since the revenues and rates authorized in this order differ from those contained in the tariffs the Company first submitted, the Commission will reject

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<sup>187</sup> Ex. 107, *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, Attachment A – Spire Missouri East, ISRS Revenue Requirement Calculation – 2<sup>nd</sup> Corrected 5/1/2019.

<sup>188</sup> Exhibit 107, *Staff Response to Order Directing Response and Notice of Second Corrected Revenue Requirement for Spire East*, Attachment A – Spire Missouri East, ISRS Revenue Requirement Calculation – 2<sup>nd</sup> Corrected 5/1/2019.

those tariffs (Tariff Tracking Nos. YG-2019-0138 and JG-2019-0139). The Commission will allow Spire Missouri an opportunity to submit new tariffs consistent with this order.

Section 393.1015.2(3), RSMo, requires the Commission to issue an order to become effective not later than 120 days after the petition is filed. That deadline is May 14, 2019, so the Commission will make this order effective on May 14, 2019.

**THE COMMISSION ORDERS THAT:**

1. The USW Local 11-6 is granted leave to file a brief as *amicus curiae* and its brief is accepted.

2. The Missouri Energy Development Association is granted leave to file a brief as *amicus curiae* and its brief is accepted.

3. The objections to Exhibits 105, 106, 107, 207, and 208 are overruled and those exhibits are admitted into evidence.

4. The attached *Stipulation and Agreement on Income Taxes* is approved and its provisions are incorporated into this order as if fully set forth herein. The signatory parties are directed to comply with its terms.

5. The attached *Stipulation and Agreement Regarding Overheads* is approved and its provisions are incorporated into this order as if fully set forth herein. The parties are directed to comply with its terms.

6. Staff's motion to dismiss for lack of jurisdiction is granted. The portions of the applications dealing with the time period of October 1, 2017, through June 30, 2018, are dismissed.

7. Spire Missouri, Inc. is authorized to establish Infrastructure System Replacement Surcharges sufficient to recover ISRS revenues in the amount of \$6,425,514 for its Spire Missouri East service territory and \$6,782,560 for its Spire Missouri West service territory. Spire Missouri, Inc. is authorized to file an ISRS rate for each customer class as described in the body of this order.

8. The tariff sheets filed by Spire Missouri, Inc. on June 7, 2018, and assigned Tariff Tracking Nos. YG-2019-0138 and JG-2019-0139, are rejected.

9. Spire Missouri, Inc. is authorized to file new tariffs to recover the revenue authorized in this Report and Order.

10. Spire Missouri, Inc.'s request for an accounting authority order is denied.

11. This report and order shall become effective on May 14, 2019.



**BY THE COMMISSION**

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

Morris Woodruff  
Secretary

Silvey, Chm., Kenney, and Coleman, CC., concur.  
Hall, C., concurs, with separate concurring  
opinion to follow.  
Rupp, C., dissents.

Dippell, Senior Regulatory Law Judge