

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

In the Matter of the Application of Laclede Gas)
Company to Change its Infrastructure System) **File No. GO-2016-0333**
Replacement Surcharge in its Laclede Gas Service)
Territory)

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

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

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

**SPIRE MISSOURI INC'S APPLICATION
FOR REHEARING OR RECONSIDERATION
OF THE COMMISSION'S REPORT AND ORDER ON REMAND**

COMES NOW Spire Missouri Inc. (f/k/a Laclede Gas Company, and referred to herein as “Spire Missouri” or “Company”), on behalf of itself and its two operating units, Spire Missouri East (“Spire East”) and Spire Missouri West (“Spire West,” f/k/a Missouri Gas Energy) and, pursuant to 386.500.1 RSMo, applies to the Commission for rehearing of its September 20, 2018 Report and Order on Remand (the “Remand Order”) in Case Nos. GO-2016-0332 and 0333 (the “2016 Cases”), or for reconsideration of the Remand Order.¹ In support thereof, Spire Missouri states as follows:

1. In the Remand Order, the Commission determined that Spire East and West failed

¹ The Commission’s order in Case Nos. GO-2017-0201 and 0202 is addressed below.

to demonstrate by a preponderance of the evidence that the cost to replace certain plastic pipe was ISRS-eligible, and found the costs of those plastic pipe replacements in the 2016 Cases collected in rates to be approximately \$3.1 million, consisting of \$2,283,628 for Spire East, and \$827,159 for Spire West.² The Commission further determined that it does not have the statutory authority to order a refund of ineligible ISRS costs from prior ISRS cases.³ As a result, the Commission decided that it would take no further action in the 2016 cases, including no action to refund any ISRS costs previously collected by the Company.⁴

2. In Case Nos. GO-2017-0201 and 0202 (the “2017 Cases”), the Commission issued an Order Denying Request to Modify Commission Order, in which the Commission denied Public Counsel’s request to modify the order in the Company’s rate cases to apply Public Counsel’s view of the effect of the Western District Court of Appeals’ November 21, 2017 Opinion (the “Opinion”) on the 2017 Cases.

3. In a separate order in Spire East and West’s current ISRS cases, Case Nos. GO-2018-0309 and 0310 (the “Current Cases”), the Commission excluded approximately \$4 million in ISRS revenues that it considered to be related to the cost to replace ISRS-ineligible plastic. By separate pleading, the Company is seeking rehearing of that order.

4. The Company does not take issue with the final outcome of the Remand Order, or of the order in the 2017 Cases, as both permit the Company to retain its previously collected ISRS revenues. If no party seeks rehearing or appeal of the Remand Order, the Company is willing to avoid the rehearing and appeal process in these cases, and address its disagreement on the cost issue in the Current Cases. However, Spire Missouri is filing this application in order to preserve

² Remand Order, p. 13

³ Id., p. 16

⁴ Id., p. 17

its rights to challenge the Commission's decision in these cases with respect to the amount of cost incurred to replace plastic facilities. To the extent that the Commission's decision regarding the cost to replace plastic facilities also applies in the 2017 Cases, Spire Missouri is filing this application in those cases as well.

5. As indicated above, the Remand Order arose from the Opinion, which reversed and remanded the Commission's Report and Order in the 2016 Cases, to the extent that the Commission allowed ISRS charges to recover the cost to replace plastic components that were not in a worn out or deteriorated condition. The Opinion instructed the Commission to determine what costs, if any, were incurred to replace such plastic facilities. The Court recognized that replacement of worn out or deteriorated facilities will at times require the replacement of nearby components that are not worn out or deteriorated.⁵ The Court also recognized that some plastic facilities may themselves be worn out or deteriorated.⁶ The Court made no finding, however, as to the amount of cost to replace plastic facilities that were not worn out or in a deteriorated condition, or how to determine that amount, but instead remanded the cases to the Commission to determine the extent of those costs.

6. The Company respectfully submits that sufficient reasons exist for the Commission to grant rehearing under 386.500.1 RSMo, or to reconsider the Remand Order. Pursuant to Section 386.500.2, Spire Missouri must set forth each ground it considers to be unlawful, unjust or unreasonable or risk losing its right to raise that ground on appeal. Therefore, the Company is including all of its grounds in this application. Specifically, the Company submits that the Remand Order was unreasonable as it was not based on competent and substantial evidence, and because it reached a conclusion that was contrary to the overwhelming weight of the evidence. In doing so,

⁵ Opinion, p. 6

⁶ *Id.*, p. 5

the Remand Order failed to follow the court's instructions on remand to determine the cost incurred to replace plastic that was not worn out or in a deteriorated condition. The Remand Order also erred in arbitrarily disregarding a long history of permitting audit sampling where it is not feasible or practical to review every item. This decision also violated the Company's due process right to a full and fair hearing held at a meaningful time and in a meaningful manner.

7. Spire Missouri agrees that the primary directive of this remand proceeding was to determine the cost to replace plastic facilities that were not worn out or deteriorated. Meeting this directive calls for a cost calculation and not an evaluation of prudence. The evidence produced by the Company in the remand proceeding, and its arguments in this pleading, focus on cost and not on prudence.

8. In companion ISRS cases tried at the same time on the same facts as the above referenced cases, the Commission found that "most of the cast iron pipes being replaced are over a hundred years old. Cast iron pipes are unsafe to use because they undergo a process called graphitization, in which the iron leaches out making the pipe subject to cracking and leaking. The steel pipe being replaced is bare and not cathodically-protected, so those pipes corrode relatively quickly and need to be replaced."⁷

9. The Commission also found that state or federal safety requirements mandate Spire Missouri to implement a cast iron and bare steel main replacement program. The Commission concluded that cast iron and steel pipes are worn out or deteriorated, and were replaced to comply with these requirements, so the costs of this program are ISRS eligible. Specifically, the Commission stated as follows:

"With regard to replacements of cast iron and steel pipes, the evidence showed that Spire Missouri is required to implement a program to replace cast iron and

⁷ Case Nos. GO-2018-0309 and 0310, Report and Order dated September 20, 2018, p. 6, par. 13; Tr. Vol. 3, p. 373-374

steel pipes and identified the state or federal safety requirement, with a citation to a state statute or Commission rule, mandating each work order. 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, so those pipes corrode relatively quickly and need to be replaced. *The Commission concludes that the cast iron and steel pipes were replaced to comply with state or federal safety requirements and were worn out or in a deteriorated condition, so they are eligible for cost recovery under ISRS.*⁸ (emphasis supplied)

10. Given the evidence and the Commission findings, there is no doubt that Spire Missouri incurs ISRS-eligible costs to replace cast iron and bare steel. This cost to replace cast iron and bare steel to comply with the mandate is the baseline ISRS-eligible cost of the program. The question the Court asked the Commission to answer is how much more above the baseline cost did Spire Missouri incur to bypass, replace or retire plastic, in addition to replacing cast iron and bare steel. So, for example, if replacing only the cast iron and bare steel would have cost \$1.0 million, then \$1.0 million would be the baseline ISRS cost customers would have paid. If replacing cast iron, bare steel and plastic would have cost \$1.2 million, the Commission could find that the incremental cost to replace plastic would be \$200,000.

11. Spire Missouri was the only party in the case to submit evidence that actually addressed the cost incurred to replace plastic. The evidence provided by two experienced Company engineers showed that the Company first addressed the matter in the 2011 time frame when it decided to ascertain the most cost-effective method to implement its systematic main replacement program.⁹ The Company gathered information from industry groups and its own field crews, and decided that a program that featured directional boring of plastic main to bypass the old cast iron and interspersed plastic was the most economic method available. The Company

⁸ Case Nos. GO-2018-0309 and 0310, Report and Order dated September 20, 2018, p. 13.

⁹ Ex. 3, p. 10, lines 14-22

experimented on some early projects and concluded that the new approach was very effective.¹⁰ With respect to service lines, the Company determined that it would transfer, or reuse, service lines where operationally and economically feasible, and renew (i.e. replace) them where this was not.¹¹ Since a main replacement required the reattachment of service lines to the main line regardless of the method chosen, the witnesses testified that the decision to replace plastic service lines did not change the fiscal superiority of the new replacement method.¹² Neither Staff nor OPC disputed these facts.

12. In short, replacing cast iron, bare steel and some plastic by bypassing the old main lines was less expensive than replacing just the cast iron and bare steel portions of the system. Recall that in the example above, replacing only the cast iron and bare steel would have cost \$1.0 million. The Company found that replacing cast iron, bare steel and plastic costs \$950,000. Since replacing cast iron, bare steel and plastic costs \$50,000 *less* than replacing just the cast iron and bare steel, there is no incremental cost to replace plastic.

13. Certainly Spire Missouri believes its approach to cast iron and bare steel replacement has been prudent. However, as emphasized above, this exercise is not about prudence; it's about the cost to replace plastic. And that cost is zero.

14. Returning to the evidence, the only party that provided competent and substantial evidence on the cost to replace plastic was Spire Missouri, through the testimony of its two engineers that the cast iron and steel main replacement programs were engineered to be cost efficient. The only party who supported its testimony with analysis was Spire Missouri, who analyzed 10 different projects, nine of which had been handpicked by OPC to support its original

¹⁰ Tr. 389-91.

¹¹ Lauber Direct, Ex. 4, p. 5, lines 1-10; Tr. 367

¹² Ex. 3, p. 4, lines 3-9; Ex. 6, p. 6, line 11 to p. 7; Tr. 390-91.

case. The 10 samples showed an average cost that was 5% less than the baseline cost that retained plastic instead of replacing it.

15. The Company witnesses testified that the 10 samples were representative of the larger population of ISRS-eligible safety projects. Staff witness Sommerer testified that the “likely result” of extending the same analysis to all ISRS projects would be “to show that *virtually all* of the plastic replacements resulted in a cost reduction.”¹³ The Company’s analysis clearly confirmed the position of the Company engineers, the only technical experts to testify in the case.¹⁴ The analysis proved that no additional cost is driven by the replacement of plastic. In light of the agreement of Spire Missouri and Staff on this point, we sincerely urge the Commission to revisit and revise the Remand Order’s errant finding that Spire’s information was inadequate.

16. The other parties freely admitted that they did not consider what actually drove the costs. Instead they merely allocated cost based on a percentage of plastic compared to other materials. This mathematical exercise is completely irrelevant to determining the actual cost to replace plastic over and above the cost to replace cast iron and bare steel.

17. Competent and substantial evidence is evidence that, if believed, has probative force upon the issues.¹⁵ It is evidence which the trier of fact could reasonably use to make its findings.¹⁶ In this case, even though the Commission believed that Staff got its math right, Staff’s answer carries no probative force on the question of how much it cost to replace plastic. Within the context of an ISRS-eligible safety project that involves replacing cast iron and bare steel, the task here was to ferret out the incremental cost, if any, to replace plastic facilities that are not ISRS-eligible. The Commission cannot reasonably place any value on the simple proportion presented

¹³ Tr. p. 498, line 23 to p. 499, line 2 (*emphasis supplied*).

¹⁴ The Safety Staff also has engineers, but Staff chose not to proffer any testimony from them.

¹⁵ *Missouri Real Estate Appraisers Comm'n v. Funk*, 306 S.W.3d 101, 106 (Mo.App.W.D.2010)

¹⁶ *Spencer v. Zobrist*, 323 S.W.3d 391 (W.D. Mo. 2010)

by Staff to accomplish this task. This is especially true where Staff itself placed no value on its own methodology.¹⁷

18. The Remand Order is unlawful because it fails to comply with the legal principles set forth in the Opinion, including the specific remand instructions given to the Commission. Specifically, it fails to use the only methodology that actually quantified the impact of plastic retirements on ISRS costs, instead using Staff's methodology that even its own proponent freely conceded was never designed to -- and in fact did not -- address the ultimate question of the cost impact of replacing plastic facilities. The Remand Order resulted in ISRS costs being excluded even though they were not in any way caused by the replacement or retirement of plastic facilities -- a result that is clearly not in keeping with the Court's remand instructions.

19. Despite the evidence provided by the Company, the Remand Order concluded that the number of projects and work orders analyzed by the Company were "far too few" to support the proposition that no cost was incurred to retire plastic facilities.¹⁸ The Remand Order does not explain, however, what academic or scientific literature was consulted, what expert advice was received, or how it otherwise arrived at this extra-record conclusion. All of these critical considerations are simply unexplained and unknown. In the end, while the Remand Order properly recognized the validity of the engineering analysis approach taken by the Company, it arbitrarily

¹⁷ As the Company discussed at length in its Brief, Staff witness Bolin repeatedly criticized the percentage method endorsed by the Commission in its order, and testified on cross-examination that she did not know whether or to what extent the percentage of plastic retired on a particular project actually affected the ultimate cost of that project. In fact, it was apparent that Ms. Bolin could not identify the cost drivers for any of the projects for which she excluded costs based on these simple percentages. (Tr. 451, 469-71). Staff witness Sommerer also conceded that the percentage of plastic in the old main had no effect on the cost of installing the new main, because the cost to install new main that bypassed the old main would be the same regardless of the amount of interspersed plastic in the old main. (Tr. 497-498). This truism, which was not even acknowledged by the Commission, directly contradicts Staff's percentage-based methodology.

¹⁸ Remand Order, p. 13

determined that approach was inadequate solely because it was not performed on all ISRS projects.¹⁹

20. The rejection of a representative sample to support the Company's position on the cost impact of plastic retirements is also at odds with the Commission's widely accepted use of such samples when evaluating large data bases like those involved in an ISRS filing. Representative samples have been regularly used by internal and external auditors, including the Commission Staff, to evaluate financial transactions that are too numerous to audit individually.²⁰ They have also been used to evaluate the operational characteristics of utility infrastructure, including their fitness for a particular purpose. For example, one of the most critical components of utility infrastructure are the meters employed by gas and electric utilities use to measure usage for billing. For many years now, the Commission has permitted these utilities to use a statistical sampling of a limited number of meters to verify the accuracy of a significantly larger population of meters in the same vintage or class.²¹ Given this routine use of representative sampling for various regulatory purposes, given the Company's testimony that its sample of ISRS projects was

¹⁹The Commission apparently utilized the same new standard in upholding Staff's proposal to remove the cost of blanket work orders in the same proportion as the plastic it found in the main replacement programs. Again, the record evidence showed that these blanket work orders, which were not related to the Company's cast iron or bare steel replacement program, contained numerous small projects covering facilities that needed to be replaced because they had become worn out or were in a deteriorated condition. All of this work is ISRS-eligible, as verified by Company witness Glenn Buck's analysis of more than 100 individual tickets in a typical blanket work order. His analysis determined that every replacement was done for a safety-related reason, including leaks, corrossions and removal of copper pig tails. (Ex. 6, p. 6). The Remand Order simply ignored the Company's sample evidence and instead adopted a Staff approach that was unsupported by the competent and substantial evidence on the record, and was arbitrary and capricious.

²⁰See e.g. *Re: United Telephone Company*, Case Nos. TR-93-181 and TO-93-309, Report and Order issued October 27, 1993, for a discussion of various sampling methods used to calculate Cash Working Capital in utility rate cases.

²¹ See *Re: Union Electric Company, d/b/a AmerenUE*, Case No. EO-2001-521, *Order Granting Variance* issued September 11, 2001; *Re: Atmos Energy Corporation*, GE-2003-0007, *Order Granting Variance* issued August 20, 2002, *Aquila, Inc.*, GE-2006-0330, *Order Granting Variance* issued March 30, 2006.

representative of the results that would be experienced across other ISRS projects, and given the Staff's acknowledgment that the cost savings shown by the sampling was likely representative of the larger universe of projects, the Remand Order's summary rejection of the sample employed to assess the cost impact of plastic retirements was arbitrary, capricious and unreasonable.²²

21. The Remand Order also erred in introducing this entirely new standard prohibiting sampling after the record closed on September 6. By doing so, the Company was denied any opportunity to present evidence to rebut this determination or to otherwise address it. The end result is that the Company was denied its due process right to have a full and fair hearing on this issue at a meaningful time and in a meaningful manner.²³

22. Under the circumstances, the Company provided sufficient evidence for the Commission to comply with the Missouri Court of Appeals' remand instruction to assess the impact of plastic retirements on ISRS costs. The Company requests that the Commission evaluate the evidentiary record anew and find that no incremental costs resulted from the plastic retirements.

²²The Commission's determination that the representative sample used by the Company was inadequate and that the Company should have conducted such an analysis on all ISRS projects established a standard that could not possibly have been satisfied by the Company given the time constraints of these cases. There were only 5 business days between the date the Commission decided to hold a new evidentiary hearing on the plastic issue and the date when testimony was due. In that limited amount of time, it was challenging enough for the Company to produce four witnesses and conduct 9 additional engineering analyses of ISRS projects. It would have been impossible within that time frame to conduct additional analyses on hundreds of additional ISRS projects. Adding this element of futility to the new standard employed by the Commission for excluding ISRS costs in these cases only underscores the arbitrary and capricious nature of the Commission's decision.

²³As the Western District Court of Appeals has observed, due process requires that administrative hearings be fair and consistent with rudimentary elements of fair play. *State ex rel Fischer v. Public Service Commission*, 645 S.W.2d 39, 43 (Mo. App. W.D. 1983), citing *Tonkin v. Jackson County Merit System Commission*, 599 S.W.2d 25, 32-33[7] (Mo.App.1980) and *Jones v. State Department of Public Health and Welfare*, 354 S.W.2d 37, 39-40[2] (Mo.App.1962). One component of this due process requirement is that parties be afforded a full and fair hearing at a meaningful time and in a meaningful manner. *Id.*, citing, *Merry Heart Nursing and Convalescent Home, Inc. v. Dougherty*, 131 N.J.Super. 412, 330 A.2d 370, 373-374[7] (1974). Obviously, a hearing on a critical issue cannot be full, fair or meaningful when it is never held.

WHEREFORE, Spire Missouri respectfully requests that the Commission grant rehearing or reconsideration, and modify the Remand Order to find that no ISRS costs are attributable to the replacement or retirement of plastic facilities

Respectfully submitted,

SPIRE MISSOURI INC.

/s/ Michael C. Pendergast (#31763)

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CERTIFICATE OF SERVICE

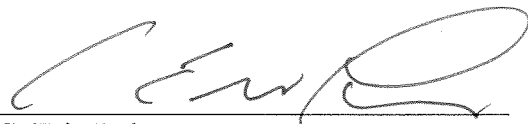
The undersigned certifies that a true and correct copy of the foregoing pleading was served on Staff and the Office of the Public Counsel, on this 28th day of September 2018 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

/s/ Rick Zucker _____

VERIFICATION

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

C. Eric Lobser, being duly sworn, on his oath states that he is Vice-President, Regulatory and Government Affairs, of Spire Missouri Inc., that he has read the foregoing application and that the matters set forth therein are true and correct to the best of his knowledge, information and belief.



C. Eric Lobser

Subscribed and sworn to before me, a Notary Public, in the City of St. Louis, State of Missouri, this 28th day of September, 2018.



Notary Public, State of Missouri

My Commission expires on: November 7, 2019

