

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

In the Matter of the Application of Spire Missouri)
Inc. for an Accounting Authority Order Concerning) File No. GU-2019-0011
Its Commission Assessment for the 2019)
Fiscal Year.)

SPIRE MISSOURI’S INITIAL BRIEF

COMES NOW Spire Missouri Inc. (“Spire Missouri” or “Company”), and, as its *Initial Brief*, respectfully states as follows to the Missouri Public Service Commission (“Commission”):

Table of Contents

INTRODUCTION.....	2
BACKGROUND	2
REQUEST.....	4
PAST COMMISSION TREATMENT OF DEFERRAL REQUESTS	4
IS THE INCREASE IN THE COMMISSION ASSESSMENT BILLED TO SPIRE MISSOURI INC. IN FISCAL YEAR 2019 AN EXTRAORDINARY ITEM?.....	6
Similarity to Rate Case Expense.....	9
Never Recoverable Under Traditional Rate Mechanisms.....	11
IS THE INCREASE IN THE COMMISSION ASSESSMENT BILLED TO SPIRE MISSOURI INC. IN FISCAL YEAR 2019 MORE THAN APPROXIMATELY 5 PERCENT OF INCOME?	13
CONCLUSION.....	14

INTRODUCTION

Spire Missouri's 2019 Fiscal Year assessment reflected an increase of \$1.66 million, or slightly more than 51%, above the 2018 Fiscal Year amount reflected in Spire Missouri's rates that became effective on April 19, 2018. Spire Missouri has requested a Commission order authorizing it to defer the amount of increase (and any future decrease) over the 2018 Fiscal Year assessment amount.

Witnesses for both the Staff of the Commission ("Staff") and Office of the Public Counsel ("OPC") approach this question as if the Commission assessment is no different than any other expense that a utility might incur. However, the Commission's own assessment should be viewed differently. It is not a normal expense related to the actual provision of utility services. It is, instead, an expense related directly and exclusively to the regulatory structure established by statute; meaning that for – but for this mandated regulatory structure, there would be no assessment. It follows that the Commission assessment is not the sort of expense that a utility should profit from – or suffer a loss from – as the Staff and OPC would suggest.

The Commission should remove its own assessment from a ratemaking process that can apparently result in a \$1.66 million profit or loss for a utility and utilize a tracker on a going forward basis to ensure that customers pay no more, and no less, than the actual assessment amount.

BACKGROUND

Spire Missouri's current rates became effective on April 19, 2018, as a result of the Commission's Amended Report and Order in Cases Nos. GR-2017-0215 and GR-2017-0216.

(Exh. 1, Weitzel Dir., p. 3) The result of those cases was a decrease in rates for Spire Missouri's customers. (*Id.*)

The revenue requirements in Cases Nos. GR-2017-0215 and GR-2017-0216, among other things, reflected Spire Missouri's Fiscal Year 2018 assessment. (Exh. 1, Weitzel Dir., p. 3) That assessment was levied against Spire Missouri in June of 2017.

Two months after the new rates went into effect, in June of this year, the Commission's 2019 Fiscal Year assessment letter was sent. The 2019 Fiscal Year assessment reflected an increase of \$1,661,778.53 above the 2018 Fiscal Year amount reflected in Spire Missouri's revenue requirement. (Exh. 1, Weitzel Dir., p. 3)

This was a (51.2%) increase from the Fiscal Year 2018 assessment from the Fiscal Year 2018 assessment included in Spire Missouri's rates. (Exh. 1, Weitzel Dir., p. 6) The assessment shortfall is in addition to the nearly \$1,000,000 in unrecovered rate case expenses the Company incurred as a result of the Commission-mandated "sharing" of rate case expenses related to the rate cases. (Exh. 1, Weitzel Dir., p. 3)

In the past, the variances from year to year for the entities that now make up Spire Missouri (legacy Missouri Gas Energy and Laclede Gas Company) have been volatile on a percentage basis. (Exh. 1, Weitzel Dir., p. 6) The following chart identified the changes over the last ten years:

MPSC Assessments
Spire Missouri, Inc (East and West)

Fiscal Year	Annual	Percent Change
2008	4,147,693.60	

2009	3,980,583.92	-4.0%
2010	3,585,137.41	-9.9%
2011	4,041,676.12	12.7%
2012	3,463,112.65	-14.3%
2013	3,384,578.19	-2.3%
2014	3,384,369.51	0.0%
2015	3,954,922.54	16.9%
2016	3,364,459.91	-14.9%
2017	2,916,945.72	-13.3%
2018	3,242,612.16	11.2%
2019	4,904,390.63	51.2%

(Exh. 1, Weitzel Dir., p. 6)

While volatile, the changes from year-to-year have not been nearly as substantial in actual dollars as the \$1.66 million variance at issue in this case.

REQUEST

Spire Missouri seeks an accounting authority order authorizing it to defer as a regulatory asset the increases in assessment amounts above the Commission's Fiscal Year 2018 assessment built into its rates until the Company's next general rate case. The Company also proposes to defer as a regulatory liability the amount by which any assessment falls short of the Fiscal Year 2018 assessment amount between now and the Company's next general rate case.

PAST COMMISSION TREATMENT OF DEFERRAL REQUESTS

The Court of Appeals has stated that a "'tracking' accounting mechanism is the same as a

request for an AAO, as it seeks to book a particular cost, normally charged as an expense on a utility's income statement in the current period, to the utility's balance sheet as a regulatory asset or regulatory liability.” *In the Matter of Kanas City Power & Light Company's Request*, 509 S.W.3d 757, 769 (Mo.App. 2016).

As recently as 2012, the Commission stated as follows:

Although the courts have recognized the Commission's authority to authorize an AAO in extraordinary and unusual circumstances, there is nothing in the Public Service Commission Law or the Commission's regulations that would limit the grant of an AAO to any particular set of circumstances.

In the Matter of the Application of Kansas City Power & Light Company and Greater Missouri Operations Company, 2012 Mo. PSC LEXIS 422, File No. EU-2012-0131 (April 19, 2012).

Spire Missouri recognizes that while the Commission has clearly recognized that its authority to grant AAO's is not limited to extraordinary circumstances, it has also commonly referred to extraordinary items as those resulting from the effects of events and transactions which are of unusual and infrequent occurrence and unusual circumstances. Even if this narrower criteria for granting an AAO were to be applied, Spire Missouri believes that the referenced increase in its assessment is such an extraordinary item.

Using this standard, the Commission has in the past issued AAO's for costs “caused by unpredictable events, acts of government and other matters outside the control of the utility or the Commission.” *In the Matter of St. Louis County Water Company's Tariff Designed to Increase Rates*, MoPSC Case No. WR-96-263, p. 13 (December 31, 1996). The Commission has further stated that it “has periodically granted AAOs and subsequent ratemaking treatment for various unusual occurrences such as flood-related costs, changes in accounting standards, and other

matters which are unpredictable and cannot adequately or appropriately be addressed within normal budgeting parameters.” *Id.* at p. 14. Further, the Commission has issued AAOs for Commission enacted mandates such as gas safety programs and changes in the Cold Weather Rule. (Exh. 1, Weitzel Dir., p. 4-5) Currently, the Company has an approved Kansas gas storage tax tracker that has seen similar volatility, dollar amounts and year over year percentage swings as compared to the Commission assessment.

IS THE INCREASE IN THE COMMISSION ASSESSMENT BILLED TO SPIRE MISSOURI INC. IN FISCAL YEAR 2019 AN EXTRAORDINARY ITEM?

General Instruction 7 of the USOA applicable to gas corporations refers to extraordinary “items.” They are defined as “items related to the effects of events and transactions which have occurred during the current period and which are of unusual and infrequent occurrence.”

In this case, the significant increase in the Commission Assessment was the result of events that were both unusual and of infrequent occurrence. Among others, these included the fact that that the Company (a) was simultaneously litigating two rate cases for two divisions at the same time, (b) was attempting to reconcile the different rate structures, tariff language and regulatory protocols for two utilities; (c) was dealing with a wide variety of issues arising from the recent acquisition of MGE and (d) was sorting through the impacts of historic changes in federal tax laws. All of this was occurring for a company that has not traditionally litigated rate cases.

The statistics cited in OPC’s opening statement (Exh. 201) showed the extraordinary nature of those cases. However, before reciting those statistics, it is helpful to remember that the Commission found that “approximately half of the issues in [the rate cases] were raised by Spire

Missouri” or “about half of the contested issues at hearing.” (*Amended Report and Order*, Cases Nos. GR-2017-0215 and GR-2017-0216, p. 47, 53 (March 7, 2018)) In other words, approximately half of the issues in the referenced rate cases were raised by parties other than Spire Missouri. Spire Missouri had no control over those issues or the resulting increase in the Commission assessment.

OPC pointed out the following facts concerning Cases Nos. GR-2017-0215 and GR-2017-0216:

- This was the first joint rate case filing for Spire East and Spire West;
- The cases were open and active all 12 months of the 2018 Fiscal Year;
- The cases contained many new and unique issues;
- 44 issues were presented to the Commission for decision (Laclede and Missouri Gas Energy cases GR-2014-0007, GR-2013-0171, GR-2010-0171, GR-2009-0355, and GR-2007-0208, all settled);
- 629 documents in EFIS (GR-2014-0007=147, GR-2013-0171=93, GR-2010-0171=189, GR-2009-0355=398, and GR-2007-0208=110);
- 11 months until a Report and Order (GR-2014-0007=7 months, GR-2013-0171=5 months, GR-2010-0171=8 months, GR-2009-0355=7 months, and GR-2007-0208=7 months); and,
- The cases were concluded with a 150-page Report and Order.

(Exh. 201)

These factors and comparisons show that Cases Nos. GR-2017-0215 and GR-2017-0216 were clearly unusual and abnormal and infrequent in occurrence. The rate cases had a significant

effect on the Commission assessment (a \$1.66 million dollar increase in the assessment), were significantly different from the ordinary and typical activities of Spire Missouri (as seen from a comparison to Laclede and Missouri Gas Energy cases GR-2014-0007, GR-2013-0171, GR-2010-0171, GR-2009-0355, and GR-2007-0208). They also contained features that are not reasonably expected to recur in the foreseeable future (the first rate case for each division after a major acquisition and a history showing that the Company has not traditionally litigated rate cases).

The substantial Fiscal Year 2019 fiscal year increase is beyond the control of Spire Missouri and a circumstance for which no provision is made in the ratemaking process. This unpredictable change, which arises from a number of factors beyond the Company's control, including when other utilities file rate cases, makes normal budgeting parameters extremely difficult to forecast. (Exh. 1, Weitzel Dir., p. 5) Moreover, unlike other expenses incurred by a utility, the magnitude of the Commission's assessment is directly and significantly impacted by the decisions and actions of the very parties who are opposing the Company's AAO request in this proceeding, namely the Staff and OPC. (Exh. 2, Weitzel Sur., p. 9)

As stated above, the Commission assessment for Fiscal Year 2019 is a \$1,661,778.53 (51.2%) increase from the Fiscal Year 2018 assessment. An increase of over 50% represents an extraordinary, non-recurring and unusual change in the assessment for Spire Missouri.

In short, the magnitude of the Fiscal Year 2019 assessment increase is an item "of significant effect", which is "abnormal and significantly different from" such increases (or decreases) in the past, related to the effects of events and transactions which have occurred during the current period and which are of unusual and infrequent occurrence, and which would

not reasonably be expected to recur in the foreseeable future.

Similarity to Rate Case Expense

The Commission should further consider the similarity between this issue and the rate case expense issue it decided in Cases Nos. GR-2017-0215 and GR-2017-0216.

Staff witness Oligschlaeger also asserts that “one important contributing factor to the increased gas case activity was Spire Missouri’s decision to file general rate cases . . . for its Spire East and Spire West divisions in April 2017,” and that those “cases took up a large amount of Staff and Commission time and attention in the latter half of 2017 and the first few months of 2018” (Exh. 100, Oligschlaeger Reb., p. 8, ln. 17-21)

Because of this activity, Staff suggested that Spire Missouri “should have reasonably expected a significant increase in its Commission assessment amount in fiscal year 2019 on account of the level of its major case activity before the Commission in the immediately preceding months.” (Exh. 100, Oligschlaeger Reb., p. 9, ln. 14-16) By “major case activity,” Staff witness Oligschlaeger confirmed that he meant Spire Missouri’s rate cases. (Tr. 58, Oligschlaeger) Staff witness Oligschlaeger went on to indicate that if Spire Missouri does not file for a general rate case in fiscal year 2019, it “should lead to a reasonable expectation that Spire’s assessment amount for 2020 may be significantly lower” (Exh. 100, Oligschlaeger Reb., p. 12, ln. 13-16)

Rate case expense was an issue decided in Spire Missouri’s last rate case (Cases Nos. GR-2017-0215 and GR-2017-0216). (Tr. 59, Oligschlaeger) Among other things, in determining how rate case expense would be treated in Spire Missouri’s rates, the Commission found that “rate case expense can benefit both utility shareholders and customers.” (Tr. 59, Oligschlaeger;

Amended Report and Order, Cases Nos. GR-2017-0215 and GR-2017-0216, p. 46 (March 7, 2018)). The Commission further concluded that “it is just and reasonable for the shareholders and the ratepayers who both benefited from the rate case, share in the rate case expense”. (Tr. 59, Oligschlaeger; *Amended Report and Order*, Cases Nos. GR-2017-0215 and GR-2017-0216, p. 53 (March 7, 2018)) Moreover, the Commission determined that “shareholders who ultimately controlled 50 percent of the rate case issues should share 50 percent of the rate case expense” other than some exceptions (*Id.*) Based on these findings and conclusions, the Commission ultimately concluded that Spire should receive rate recovery of 50 percent of its rate case expense. (*Amended Report and Order*, Cases Nos. GR-2017-0215 and GR-2017-0216, p. 55 (March 7, 2018))

As reflected above, Staff has testified that the increase in Commission assessment experienced by Spire Missouri is, in effect, Staff’s rate case expense that is being assigned 100% to Spire Missouri’s shareholders as Staff indicated that the \$1.66 million increase is primarily associated with Staff and OPC’s work in Spire Missouri’s rate cases. (Tr. 61, Oligschlaeger)

One would think that Staff’s work in rate cases should similarly benefit both shareholders and customers. In fact, Staff witness Oligschlaeger said that if Staff does its “job right, [its] positions strive to be fair to the interest of both utilities, the shareholders and the customers” because they try to “balance the interest.” (Tr. 60, Oligschlaeger) Using the Commission’s reasoning from Cases Nos. GR-2017-0215 and GR-2017-0216, therefore, at a minimum, the Commission should be interested in a sharing of these expenses.

Without the requested deferral, there is no way that the shareholders and customers will have an opportunity to share those rate case expenses. (Tr. 61-62, Oligschlaeger) If they were

deferred, the Commission could determine in the next rate case if and, if so, how the Commission rate case expenses should be shared. (Tr. 62-63, Oligschlaeger)

Never Recoverable Under Traditional Rate Mechanisms

Staff attempts to address the assessment like it is no different than any other expense that a utility may incur. Staff witness Oligschlaeger states that “Staff does not view Commission Assessment expense to be inordinately difficult to forecast” (Exh. 100, Oligschlaeger Reb., p. 13, ln. 13-14; Tr. 55) and that Spire Missouri “should have reasonably expected a significant increase in its Commission Assessment in fiscal year 2019,” based on its rate case activity. (Exh. 100, Oligschlaeger Reb., p. 9, ln. 14-15) However, this increase is not something that would ever get captured in a revenue requirement.

The Commission relies on “known and measurable” data to set customer rates. (Tr. 55, Oligschlaeger) While the true-up period in the last Spire rate cases ended as of September 30, 2017 (*Amended Report and Order*, Cases Nos. GR-2017-0215 and GR-2017-0216, p. 6 (March 7, 2018)), the Staff made no attempt to update the Commission assessment as of that date based on the rate case activities that had taken place. (Tr. 56, Oligschlaeger)

Staff witness Oligschlaeger indicated that in his view the fiscal year 2019 assessment was not known and measurable for purposes of setting revenue requirement at the time of the last Spire Missouri rate cases. (Tr. 56, Oligschlaeger) He further indicated that utilizing the known and measurable standard, there was no way that the 2019 Fiscal Year assessment increase could have been factored into Spire Missouri last rate cases. (*Id.*; Tr. 57-58, Oligschlaeger).

Section 386.370.1, RSMo, states:

The commission shall, prior to the beginning of each fiscal year beginning with

the fiscal year commencing on July 1, 1947, make an estimate of the expenses to be incurred by it during such fiscal year reasonably attributable to the regulation of public utilities as provided in chapters 386, 392 and 393 and shall also separately estimate the amount of such expenses directly attributable to such regulation of each of the following groups of public utilities: Electrical corporations, gas corporations, water corporations, heating companies and telephone corporations, telegraph corporations, sewer corporations, and any other public utility as defined in section 386.020, as well as the amount of such expenses not directly attributable to any such group.

The Commission assessment is based on estimates. Staff should have updated their assessment amount in the true up period based on actual time spent on the rate case or estimated time spent on the case through that time. This also shows that the Commission assessment is different than most Company expenses in the rate case process by being an approved government mandated expense based on estimates.

In fact, the Staff routinely updates rate case expense through the conclusion of the briefing process in a rate case. This means that in Spire Missouri's most recent rate cases, the actual cut-off for measuring such expenses occurred in [February 2018], or nearly five months after the update period and only a few months prior to the end of the fiscal year on which the 2019 assessment was based. Obviously, measuring Commission assessment amounts in a similar manner would have led to a more realistic rate case allowance.

Taking at face value the Staff's assertion that no better estimate of the Company's assessment was possible, however, means that, the Commission will have effectively created and billed its own rate case expense in a way that will require Spire Missouri's shareholders to bear 100% of that expense, while also bearing a significant portion of its own rate case litigation costs. That will be the result, of course, unless the deferral requested by the Company is granted so that such costs can be considered in its next rate case. The Commission's policy developed

over the past several years which strongly favors a sharing of rate case expense would seem to be equally applicable to the Commission's own rate case expense and is a factor that is worthy of consideration in evaluating the merits of the Company's deferral request.

IS THE INCREASE IN THE COMMISSION ASSESSMENT BILLED TO SPIRE MISSOURI INC. IN FISCAL YEAR 2019 MORE THAN APPROXIMATELY 5 PERCENT OF INCOME?

General Instruction 7 of the USOA states, in part, as follows:

To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent as extraordinary.

The increase in Spire's assessment is not "more than approximately 5 percent of income, computed before extraordinary items."

However, while it may be one factor to consider, the relationship of the deferral to income is not determinative as to any particular outcome. In *In the matter of the application of Missouri Public Service for the issuance of an accounting authority order*, 1 Mo.P.S.C.3d 200, 206, Case No. EO-91-358, et al., (December 20, 1991), the Commission stated as follows:

The issues of whether the event has a material or substantial effect on a utility's earnings is also important, but not a primary concern. The company, under the USOA, is required to seek Commission approval if the costs to be deferred are less than five percent of the company's income computed before the extraordinary event. This five percent standard is thus relevant to materiality and whether the event is extraordinary but is not case-dispositive.

(emphasis added)


The USOA does not exclude deferral of amounts less than 5% of net income. Instead, it is for such amounts, that it expressly calls for Commission approval.

CONCLUSION

Given the nature of the nature of the expense at issue – the Commission’s own assessment – the size of the variance in that amount – and the unusual and infrequent occurrence of the events leading to that variance – the Commission should grant Spire an Accounting Authority Order authorizing it to track on its books a regulatory asset (or liability), which represents the increases (or decreases) from its assessment as allowed in Cases Nos. GR-2017-0215 and GR-2017-0216, beginning with the Fiscal Year 2019 Commission assessment and continuing through subsequent years until the Company’s next rate case.

WHEREFORE, Spire Missouri respectfully submits this *Initial Brief* for the Commission’s consideration.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 28th day of December, 2018, to:

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