

Exhibit No. 19

Exhibit No.:	_____
Issue:	Income Tax, NOL Exclusion, Property Tax Tracker, GRT
Witness:	Charles J. Kuper
Type of Exhibit:	Rebuttal Testimony
Sponsoring Party:	Spire Missouri Inc.
Case No:	GR-2021-0108
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SPIRE MISSOURI INC.

CASE NO. GR-2021-0108

REBUTTAL TESTIMONY

OF

CHARLES J. KUPER

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1 **Q. DO YOU AGREE WITH STAFF’S POSITION ON THIS ISSUE?**

2 A. No. Staff draws a distinction between city tax and federal and state tax without a clear
3 justification. As Staff notes, Spire has not paid city earnings taxes since 2013, but this is
4 also true of federal and state taxes which have also been deferred as a result of having
5 operating losses during this time. Therefore, Staff’s position of removing the city earnings
6 tax from the cost of service is incongruous with its treatment of federal and state deferred
7 taxes which it allows in cost of service. Further, deferred taxes are not waived taxes. When
8 Spire has taxable income in future tax periods, it will need to pay city tax, as well as federal
9 and state tax. In order to pay the city tax, Spire needs to collect the funds as part of its cost
10 of service. The cost of service tax should be based on the statutory tax rates for federal,
11 state, and city.

12 **Q. IS THERE AN ISSUE YOU WOULD LIKE TO ADDRESS REGARDING**
13 **TESTIMONY ON SPIRE’S TREATMENT OF TCJA ISSUES?**

14 A. Yes, in Staff’s Cost of Service Report, Staff recommends the Commission order a transfer
15 of the amounts refunded to customers from the protected balance to the unprotected balance
16 of Excess ADIT for return to customers. (Staff Report-Young, pages 109-11.) Staff
17 believes this transfer will restore a perceived imbalance of protected ADIT to the amount
18 required by the IRS-sponsored Average Rate Assumption Method (“ARAM”), which Staff
19 believes is sufficient to address any potential concerns about potential normalization
20 violations.

21 **Q. PLEASE EXPLAIN THE DIFFERENCE BETWEEN A PROTECTED BALANCE**
22 **AND AN UNPROTECTED BALANCE IN TERMS OF ADIT.**

1 A. Excess ADIT is classified as either “protected” or “unprotected” under the Internal
2 Revenue Code. “Protected” ADIT is a federal tax concept and represents plant-related
3 ADIT created by method and life differences between tax treatment and book treatment,
4 which should be amortized and returned to customers no more rapidly than over the life of
5 the underlying asset using the ARAM methodology or an alternative method.
6 “Unprotected” ADIT covers the remaining items of ADIT not considered protected and is
7 not subject to normalization and may be amortized and returned to ratepayers in accordance
8 with the governing state agency requirements.

9 **Q. HOW WAS EXCESS ADIT TREATED IN THE COMPANY’S LAST RATE CASE?**

10 A. In the Company’s last general rate case, GR-2017-0215 and 0216, it was unknown exactly
11 how much of the ADIT was considered protected and how much was unprotected. It was
12 estimated and determined that 50% be classified as protected ADIT and 50% as
13 unprotected ADIT. Protected ADIT was set up to be amortized over a period of 20 years,
14 whereas unprotected ADIT was set up to be amortized over a period of 10 years.

15 **Q. DID THE COMMISSION CONTEMPLATE HOW TO TRUE UP THE ACTUAL
16 PROTECTED VERSUS UNPROTECTED ADIT AMOUNTS IN THE NEXT RATE
17 CASE?**

18 A. The Commission noted in the last rate case that the ADIT had a tracker associated with it
19 and the true up of the amounts would be considered in the next rate case, which is this case.

20 **Q. WHAT IS STAFF’S RECOMMENDATION REGARDING THE TREATMENT OF
21 ACTUAL PROTECTED VERSUS UNPROTECTED ADIT AMOUNTS?**

22 A. Staff recommends that the balance of the unprotected Excess ADIT should be adjusted to
23 capture the reclassification of the over-refunded amounts of protected Excess ADIT to flow

1 back to customers as well as allowing Spire to recover a perceived shortfall in collection
2 of unprotected excess ADIT from customers. Staff recommends that the adjusted balance
3 of unprotected excess ADIT should be reset to expire 10 years from the effective date of
4 rates from the 2017 cases.

5 **Q. DO YOU AGREE WITH STAFF'S POSITION ON THIS ISSUE?**

6 A. No. Spire recommends the variance in the protected component of the excess ADIT flow
7 back to ratepayers over a three-year period. This recommendation is also included in the
8 Direct and Rebuttal Testimony of Alan Felsenthal. Spire also recommends the unprotected
9 component that was under-refunded be adjusted over a three-year period as well. Staff's
10 alternative plan would take 7 years (10 years from the effective date of the 2017 cases).
11 Spire believes this is too long of a period for reversal.

12 The issue that is concerning to Spire is that a protected balance noted in the last rate case
13 is now being reclassified to an unprotected balance, with the "reclassified" unprotected
14 balance being amortized over the remaining seven years as established in the prior rate
15 case. This seven-year time frame could be problematic. If the Commission determines a
16 reclassification is appropriate as Staff has presented, Spire would recommend a ruling
17 request be submitted to the IRS to rule on the issue before such reclassification is made.
18 Such a ruling would be necessary to ensure the Company is not violating the IRS's
19 normalization rules.

20 **Q. HOW DOES STAFF PROPOSE THE COMPANY TREAT EXCESS ADIT FROM**
21 **THE MISSOURI TAX REFORM?**

22 A. As stated in my Direct Testimony, the State of Missouri enacted an income tax rate change
23 in 2018 which reduced the tax rate from 6.25% to 4%. The tax rate change was effective

1 October 1, 2020 for Spire. This law change has required a remeasurement of the deferred
2 tax balances that existed on September 30, 2020, and has created an excess in ADIT that
3 must be returned to ratepayers. Staff recommends that the Excess ADIT balance at May
4 31, 2021 be included in rate base and annualized amounts of amortizations in its income
5 tax schedule. The amortizations are based on the ARAM methodology for protected Excess
6 ADIT and a 10-year period for unprotected Excess ADIT.

7 **Q. DO YOU AGREE WITH STAFF'S RECOMMENDATION TO INCLUDE AN**
8 **EXCESS ADIT BALANCE IN RATE BASE AS OF MAY 31, 2021?**

9 A. No. The effective date of the Missouri tax rate change for Spire was October 1, 2020. As
10 such, the adjustment of the deferred tax balances to reflect this rate change needs to be
11 done as of October 1, 2020 and not at May 31, 2021. The deferred tax balances as of
12 October 1, 2020 need to be reset with the lower state tax rate. The variance between the
13 deferred tax balance at the rate prior to the change and the deferred tax balance after the
14 change is the amount of excess ADIT.

15 Spire believes that excess ADIT created as a result of the Missouri tax rate change should
16 be treated as unprotected because it is a state tax change. The protected concept is a federal
17 requirement to not return the protected excess ADIT more rapidly than it would normally
18 reverse without a tax rate change. There is no requirement for this to apply to state or local
19 tax rate changes. Spire also expects the deferred tax rate to apply in the computation of the
20 excess ADIT to include the city/local tax rate.

21 **III. NET OPERATING LOSS EXCLUSION**

22 **Q. OPC WITNESS JOHN S. RILEY STATES THAT NOL SHOULD BE EXCLUDED**
23 **FROM THE COMPANY'S RATE BASE CALCULATION AND SHOULD NOT BE**

1 A. Yes, Staff, MIEC, and Vicinity all expressed concern over future use of the property tax
2 trackers. (Staff Report-Juliette, pages 83-89 and Meyer Direct, page 18.)

3 **Q. DO YOU TAKE ISSUE WITH STAFF, MIEC AND VICINITY’S POSITION**
4 **SUPPORTING DISCONTINUATION OF THE PROPERTY TAX TRACKERS?**

5 A. Spire does not oppose discontinuation of the property tax tracker in Missouri. The Missouri
6 property tax is primarily based on the amount of property (plant) in service within the state.
7 The valuation of the property is relatively consistent year over year with increases driven
8 by new assets being placed in service.

9 **Q. WHAT ABOUT THE KANSAS PROPERTY TAX TRACKER?**

10 A. Spire opposes discontinuation of the property tax tracker in Kansas. The assets Spire has
11 in Kansas consists of natural gas inventory, and the price of that inventory on hand is
12 subject to change based on market conditions. By way of example, the property tax tracker
13 would serve a critical role in the event of a repeat of the February 2021 cold weather event.
14 If the historical price of natural gas was on average \$3 per unit of measure, and the annual
15 property tax was on average \$1,500,000, an increase in the price of natural gas to \$4 per
16 unit of measure on the lien date would cause the property tax to increase to \$2,000,000
17 assuming the same volume of natural gas is on hand at the lien date. This increase in
18 Kansas property tax could be significant.

Spire recommends maintaining the Kansas property tax tracker.

19 **V. GROSS RECEIPTS TAX**

20 **Q. IS THERE AN ISSUE YOU WOULD LIKE TO ADDRESS REGARDING**
21 **TESTIMONY ON SPIRE’S TREATMENT OF THE GROSS RECEIPTS TAX?**

22 A. Yes. OPC witnesses John S. Riley and Robert E. Schallenberg expressed concern that Spire
23 incorrectly over-collected gross receipts taxes from its customers. (Riley Direct, page 13-

1 18 and Schallenberg Direct, pages 2-6.) In sum, OPC's testimony states that Spire billing
2 software incorrectly placed the ISRS court-ordered refund below the gross receipts tax
3 calculation line, thereby short-changing the ratepayer for the amount of gross receipts tax
4 that should have been refunded based on amount of the ISRS refund amount.

5 **Q. COULD YOU EXPLAIN WHY OPC AND SPIRE CAME TO DIFFERING**
6 **CONCLUSIONS ON THIS ISSUE?**

7 A. Yes. To start, the ISRS settlement was silent with respect to the treatment of gross receipts
8 tax. So, when tasked with how to treat the refund in reference to the gross receipts tax,
9 Spire looked elsewhere in the ISRS settlement to determine how to calculate the refund.

10 The settlement provides that a reduction of *revenue* was to be provided to ratepayers. In
11 nearly 80% of the taxing jurisdictions in which Spire operates, the gross receipts tax is a
12 component of *revenue* on which the gross receipts tax is computed. So, for example, if the
13 charges for natural gas service in a given period are \$100 with a taxing jurisdiction GRT
14 tax rate of 7%, the total bill for that period would be \$107.53, with \$7.53 of gross receipts
15 tax ($107.53 * 7\%$, this includes the gross-up of the tax). If the gross receipts tax was not a
16 component of revenue, the gross receipts tax would be \$7.00 ($100 * 7\%$).

17 As the gross receipts tax is part of the definition of *revenue*, it was proper to first calculate
18 revenue *with* its gross receipt tax component, and then to provide a reduction of revenue
19 below the line.

20 This process is the functional equivalent of if Spire had mailed a normal bill to a customer
21 with a check for their refund, but, when added as a credit, removed the hassle and delay of
22 having the customer cash the check.

1 OPC argues that Spire reaped an improper benefit by providing a refund after including the
2 gross receipt tax component. It appears that OPC may not have considered that the gross
3 receipts tax is a factor of revenue in the majority of taxing jurisdictions and thus, excluded
4 the tax from the revenue-to-be-reduced. Further, OPC misunderstands Spire’s role in the
5 transaction. Spire does not and cannot reap a benefit in how it collects the gross receipts
6 tax. Spire is a pass-through with respect to gross receipts tax and Spire is obligated to
7 collect and remit the tax based on the operative ordinances of the taxing jurisdictions.

8 **Q. DID OPC MAKE ANOTHER STATEMENT REGARDING GROSS RECEIPTS**
9 **TAX YOU WISH TO ADDRESS?**

10 A. Yes, OPC stated Spire over-collected gross receipts tax by \$7 million over the last three
11 years based on three adjustments made—two cash working capital reductions and a non-
12 cash asset non-inclusion. (Schallenberg Direct, page 73.) To clarify Spire’s gross receipts
13 tax collection process, Spire collects and remits gross receipts taxes based on the taxing
14 jurisdiction ordinances in effect for the taxing period. The revenue reported is primarily
15 the cost of gas and the customer charges. There are, however, certain corrective
16 adjustments that Spire makes on a monthly basis, including adjustments for bad debt. An
17 over-collection of \$7 million over a three-year period equates to just under \$200,000 per
18 month on average. This is an unreasonable variance given that the adjustments that Spire
19 makes are, to some degree, subjective. Further, to the extent Spire over-collects this tax,
20 Spire does not keep the proceeds. Instead, Spire refunds these amounts to the payors. It
21 should be noted that the items OPC references as adjustments—cash working capital
22 reductions and a non-cash asset non-inclusion—are not deductions or adjustments that

1 Spire takes in collecting gross receipts tax, so I would disagree with any accounting which
2 leads to those adjustments being included in Spire's calculation of gross receipts tax.

3 **VI. CONCLUSION**

4 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

5 **A.** Yes, it does.

