

Exhibit No. 23

Exhibit No: _____
Issues: **Litigation Defense Fees,
Severance Payments, and
Insurance Premiums**
Witness: **Eric Lobser**
Type of Exhibit: **Rebuttal Testimony**
Sponsoring Party: **Spire Missouri Inc.**
Case Nos.: **GR-2021-0108**
Testimony Date: **June 17, 2021**

SPIRE MISSOURI INC.
CASE NO. GR-2021-0108
REBUTTAL TESTIMONY
OF
C. ERIC LOBSER
JUNE 17, 2021

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1 **REBUTTAL TESTIMONY OF C. ERIC LOBSER**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is C. Eric Lobser and my business address is 700 Market Street, Saint Louis, MO
4 63101.

5 **Q. WHAT IS YOUR PRESENT POSITION?**

6 A. I am currently Vice President of Insurance Programs for Spire Missouri Inc. (“Spire” or
7 “Company”)

8 **Q. PLEASE STATE HOW LONG YOU HAVE HELD YOUR POSITION AND BRIEFLY
9 DESCRIBE YOUR RESPONSIBILITIES.**

10 A. I have held this position since December, 2018. My main responsibilities relate to
11 managing the annual insurance program renewals for Spire, overseeing the self-
12 administered and self-insured workers compensation and liability claims departments,
13 administering the certificate of insurance (COI) process for contractual insurance
14 requirements for Spire’s vendors, as well as the surety and COI requirements that third
15 parties have of Spire, and leading our captive insurance company, Laclede Insurance Risk
16 Services.

17 **Q. WHAT WAS YOUR PROFESSIONAL EXPERIENCE PRIOR TO ASSUMING
18 YOUR CURRENT POSITION?**

19 A. I have worked for Spire for 30 years and previously held the position of Vice President of
20 Regulatory and Governmental Affairs for four years and held various positions, including
21 Managing Director, for about thirteen years in Strategic Planning & Corporate
22 Development. Prior to that I worked in a variety of positions, including Senior Analyst in
23 Treasury, Supervisor and then Assistant to the Manager in Customer Accounting,

1 Administrative Services in Operations, and Budget Analyst in the Financial Services
2 Department.

3 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

4 A. I obtained my undergraduate degree in Finance at Boston College and my Master of
5 Business Administration from the University of Missouri at St. Louis. Additionally, I make
6 certain to annually pursue several education courses, seminars and conferences of both
7 industry and functional interest to continue to develop my knowledge and capabilities.

8 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY BEFORE THIS COMMISSION?**

9 A. Yes. Case Nos. GR-2017-0215 and GR-2017-0216.

10 **I. PURPOSE OF TESTIMONY**

11 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

12 A. The purpose of my rebuttal testimony is to respond to concerns raised by the Office of the
13 Public Counsel (“OPC”) witness Geoff Marke involving recovery of Spire’s litigation expense
14 in discrimination claims. I also respond to OPC witness Amanda Conner and Staff witness
15 Antonija Nieto regarding the inclusion of severance expense in the Company’s cost of service.
16 Lastly, I will respond to the direct testimony from the Missouri Industrial Energy Consumers
17 (“MIEC”) and Vicinity witness Greg Meyer on insurance premiums.

18 **II. COSTS ASSOCIATED WITH LITIGATION DEFENSE**

19 **Q. SPIRE’S COSTS FOR LITIGATION DEFENSE HAVE BEEN CRITICIZED BY
20 OPC WITNESS GEOFF MARKE IN HIS DIRECT TESTIMONY. MARKE
21 RECOMMENDS THESE COSTS BE DISALLOWED (Marke Direct, pages 10-13).
22 DO YOU THINK THAT IS APPROPRIATE?**

1 A. No, I don't. Legal fees are necessary corporate expenses to defend the Company against
2 lawsuits. Where suits have no merit, lawyers defend to prevent the Company from paying
3 unnecessarily, and from becoming a soft target. Where suits have merit, legal fees are
4 necessary to position the case to limit the Company's exposure. We track and monitor legal
5 expense on all lawsuits monthly, and the Company works very hard to keep these costs as
6 low as possible, while still remaining appropriate to the defense of the case. Our defense
7 costs absolutely limit the amount of judgments and settlements, keeping the overall cost of
8 service low.

9 **Q. OPC'S WITNESS MARKE HAS RAISED QUESTIONS ABOUT THE**
10 **McGAUGHY LITIGATION MATTER, INCLUDING WHETHER \$300,000 WAS**
11 **THE LIMIT OF THE COMPANY'S EXPOSURE IN THAT CASE (Marke Direct,**
12 **page 12.) WERE THERE ANY OTHER COSTS ASSOCIATED WITH THAT**
13 **MATTER?**

14 A. No. That was the full extent of the Company's expense that was not reimbursed by the
15 Company's insurance carrier.

16 **Q. DID SPIRE'S INSURANCE COSTS RISE AS A RESULT OF THAT CASE?**

17 A. No. Insurers base premiums on overall market trends, industry-specific issues, relevant
18 "exposures" related to the size of the insured such as revenues, customers-base, assets or
19 employees, as well as loss history. Spire has had a relatively clean loss history in excess
20 liability (XL) since the last rate case, which helped it to achieve lower premium increases
21 than many other peers. Additionally, underwriters review operational enhancements, such
22 as Spire's aggressive pipeline replacement program and other safety programs, as well as
23 regulatory or statutory changes that help mitigate the potential for future claims of similar

1 frequency and/or severity of past claims. The McGaughy lawsuit was based on a charge
2 of discrimination filed with the Missouri Commission on Human Rights in 2014. In 2017,
3 the legislature amended the Missouri Human Rights Act (“MHRA”) (the statute under
4 which McGaughy’s case was tried) to impose damage caps. The case was tried after the
5 amendments went into effect, but the case was grandfathered under the pre-cap version of
6 the statute. Liability for such claims is now limited to \$500,000, plus attorneys’ fees and
7 actual back pay at the time of trial. The 2017 damage cap amendments to the MHRA ensure
8 that the significant size of the McGaughy case is unlikely to occur going forward. The
9 “severity” result in McGaughy is therefore extremely remote, and underwriters know that.
10 As such, the McGaughy claim is not irrelevant, but it is not material. In brief, it has not
11 been our losses that are the driver for our premium increases, but rather the historically
12 difficult insurance market, as well as some other notable energy industry events.

13 **III. SEVERANCE PAYMENTS**

14 **Q. STAFF AND OPC HAVE ALSO CRITICIZED THE USE OF EMPLOYEE**
15 **SEVERANCE AGREEMENTS, AND THE EXPENSE ASSOCIATED WITH**
16 **THOSE (Staff Report- Nieto, page 69, and Conner Direct, page 9). DO YOU THINK**
17 **THOSE COSTS SHOULD BE INCLUDED IN THE COST OF SERVICE?**

18 **A.** Yes, I do. Like most large companies, we use severance agreements to limit potential
19 employment practices liability (EPL) when an employee terminates employment under
20 circumstances that could give rise to an EPL claim. Plaintiffs’ lawyers who specialize in
21 the filing and prosecution of EPL claims know that the Company’s cost to defend these
22 highly fact-specific claims is high, and is a cost the Company must incur whether it wins
23 or loses such cases, even where they don’t have merit. Where appropriate, we enter into
24 severance agreements with terminating employees to obtain an advance release of these

1 claims. The severance payment mitigates the legal costs the Company would otherwise
2 incur to defend against EPL claims brought by the terminating employee, and obtains the
3 added benefit of eliminating any potential liability associated with that claim. Overall, it is
4 a more cost-effective method of dealing with employees who make EPL allegations at the
5 time of termination.

6 **Q. OPC HAS SUGGESTED THAT THE ONLY PURPOSE OF SEVERANCE**
7 **AGREEMENTS IS TO PROTECT EXECUTIVES FROM EMBARRASSMENT**
8 **(Conner Direct, page 9). IS THAT TRUE?**

9 A. Certainly not. The Company's senior leadership is rarely, if ever, involved in the
10 circumstances underlying EPL claims. There is no personal motivation for them when the
11 Company enters into severance agreements. Typically, they are not involved in that
12 process, or even aware of it, since such agreements are typically handled by the Company's
13 Legal and Human Resources functions. The only reason to enter into these agreements is
14 to save costs overall, as I explained earlier.

15 **Q. BOTH STAFF (Staff Report-Nieto, page 69) and OPC (Conner Direct, page 9)**
16 **TESTIFY THAT THE UTILITY COMPANY MAY RECOVER SEVERANCE**
17 **PAYMENTS THROUGH REGULATORY LAG AND THEREFORE SHOULD BE**
18 **REMOVED FROM COST OF SERVICE. WHAT IS YOUR RESPONSE?**

19 A. These costs can be looked at similarly with defense costs, which as noted above help reduce
20 risk exposure and future expense, so not getting recovery of these costs would be putting a
21 disincentive on risk mitigation and cost management, which would be counter-productive.
22 Just because these costs are associated with employee turnover doesn't mean the Company
23 benefits from lag. If the position goes unfilled by the time of the update period, then it

1 would suffer from regulatory lag until the next rate case due to the vacancy. If the position
2 is filled before then next rate case, and the new salary is higher, then it suffers from lag
3 until rates can be updated. This is no different than any other turnover situation. Just
4 because severance costs happen to be associated with turnover doesn't mean the Company
5 should have different treatment related to recovery of that prudently incurred cost,
6 especially when those severance agreement costs help reduce risk and costs.

7 IV. INSURANCE PREMIUMS/INJURIES AND DAMAGES

8 **Q. MIEC/VICINITY DISAGREE WITH SPIRE'S ADJUSTMENT TO ITS**
9 **INSURANCE PREMIUMS, INCLUDING PROPERTY INSURANCE, CLAIMING**
10 **THAT THE COMPANY'S PROPOSED 10% INCREASE TO THE 2020 PREMIUM**
11 **RATES IS INAPPROPRIATE BECAUSE THE ADJUSTMENTS ARE**
12 **SPECULATIVE UNTIL ACTUAL PREMIUMS HAVE BEEN FINALIZED (Meyer**
13 **Direct, pages 13-14; 16). IS SPIRE'S ADJUSTMENT BASED ON SPECULATION?**

14 **A.** No, it is not. Those estimates were based on industry projections and targets announced
15 by our carriers at the time and were not mere speculation. As it turned out, the insurance
16 market continued to worsen and the actual renewal in March was just under a 20% increase,
17 below the updated target range announced by our carrier. So, we now have confirmation
18 the actual costs are just slightly under those previously estimated.

19 **Q. MIEC/VICINITY OPPOSE SPIRE'S PROPOSAL OF USING A THREE-YEAR**
20 **AVERAGE FOR ALL CLAIMS PAID. INSTEAD, MIEC/VICINITY**
21 **RECOMMEND THAT A THREE-YEAR AVERAGE BE USED ONLY FOR**
22 **EXCESS LIABILITY CLAIMS AND THAT ALL OTHER CLAIMS BE HELD AT**
23 **THE TEST YEAR LEVELS (Meyer Direct, page 15). WHAT IS YOUR RESPONSE**
24 **TO THIS PROPOSAL?**

1 A. I think this would be picking and choosing a methodology based on a desired outcome. If
2 the costs had been significantly higher in that last year with the same three-year average, I
3 doubt there would be the same objection. I utilized the same methodology as the last rate
4 case, and frankly using anything less than three years for something as variable as claims
5 creates the potential for rate volatility.

6 **Q. MIEC/VICINITY ALSO DISAGREE WITH SPIRE'S ADJUSTMENT FOR**
7 **EXCESS LIABILITY AND WORKERS COMPENSATION, BASED ON THE**
8 **SAME ARGUMENTS MIEC/VICINITY MADE FOR PROPERTY INSURANCE**
9 **(Meyer Direct, page 17). HOW DO YOU RESPOND?**

10 A. As noted previously, we have been through our renewals for Excess Liability and Workers
11 Compensation in March, so those actual costs are known and measurable and are being
12 provided with the update period.

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

14 A. Yes, it does.

