

**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 ) **File No. GO-2017-0202**  
Infrastructure System Replacement )  
Surcharge in its Laclede Gas Service )  
Territory )

**STAFF’S RESPONSE TO SPIRE MISSOURI’S MOTION TO STRIKE**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Response to Spire Missouri’s Motion to Strike Extra-Record Evidence Submitted by OPC and Staff* (“Motion”), states as follows:

1. On April 30, 2018 and May 25, 2018, Spire Missouri, Inc. d/b/a Spire (“Spire Missouri”) filed procedural recommendations on behalf of itself, the Office of the Public Counsel (“OPC”), and the Staff of the Missouri Public Service Commission (“Staff”) (collectively “Parties”) in response to Commission Orders directing the Parties to advise it on how these remand proceedings should be conducted.

2. Thereafter, on June 5, 2018, the Commission issued its *Order Setting Procedural Schedule* in which it ordered the briefing schedules recommended by the Parties.

3. On June 29, 2018, the Parties filed their initial briefs. Staff filed its brief in the form of a report, as agreed to by the Parties,<sup>1</sup> which it subsequently amended through the filing of a *Notice*.<sup>2</sup>

4. On July 23, 2018, Spire Missouri filed its Motion, which expressed objections to both Staff's and OPC's initial briefs filed June 29, 2018, by stating the following:

Both OPC and Staff based their proposed disallowances on a new methodology that relies on a simple ration of the amount of plastic replaced versus the total amount of pipe replaced. Neither Staff nor OPC cited to record evidence in the case to support their theory. <sup>3</sup>

\* \* \*

The Commission should strike those portions of the post-hearing submissions of OPC and Staff that, for the first time, propose a new method for adjusting the Company's ISRS charges based solely on work order information that simply details the quantities of plastic replaced as part of the Company's cast iron and bare steel replacement programs. Specifically, the Commission should strike: (i) the section headed by "Public Counsel's Calculation of the Appropriate Refund on pages 6-8 of OPC's Initial Brief; (ii) the attached supporting affidavit of John Robinett; and (iii) section 6 on pages 7-9 of Staff's Report, as amended by its subsequent Notice. The Commission should also strike the two sections in Staff's Attachment A headed by the titles starting "Staff's Revenue Calculation" and the outcome of this calculation on Appendix A. <sup>4</sup>

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OPC and Staff have both violated the agreement that the parties proposed to the Commission, as well as the Commission's order approving that agreement, by introducing evidence that is not present in

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<sup>1</sup> See the Parties' April 30, 2018 and May 25, 2018, *Responses to Commission Orders Directing Filing*, filed in Case Nos. GO-2016-0332, GO-206-0333, GO-2017-0201, and GO-2017-0202.

<sup>2</sup> See *Staff Notice*, filed July 9, 2018, in Case Nos. GO-2016-0332, GO-206-0333, GO-2017-0201, and GO-2017-0202.

<sup>3</sup> *Spire Missouri's Motion To Strike Extra-Record Evidence Submitted by OPC and Staff*. p. 2.

<sup>4</sup> *Id.* at p. 3.

the record of the original cases, as supplemented by additional work order data. Although presented in the form of an “argument” both OPC and Staff have presented new evidence in the form of a new methodology for disallowing the Company’s ISRS charges. This new methodology, which seeks to disallow ISRS costs based on a simple ratio of the amount of plastic pipe replaced versus the total amount of pipe replaced, is not in the evidentiary record of these cases, nor is it contained in the work order information supplied by the Company.<sup>5</sup>

5. As stated in Spire Missouri’s Motion, Staff cites to the testimony of Spire Missouri witness Glenn Buck<sup>6</sup> in support of its proposed methodology of utilizing the percentage of plastic in each work order to determine the amount of Spire Missouri’s ISRS request that would be ineligible for recovery. However, contrary to Spire Missouri’s allegations, this methodology *is* in the evidentiary record of Case Nos. GO-2016-0332 and GO-2016-0333, and is “a possible way” to determine the value of the ineligible costs. At the evidentiary hearing for Case Nos. GO-2016-0332 and GO-2016-0333, Mr. Buck and counsel for OPC engaged in the following exchange:<sup>7</sup>

**Q. If 10 percent of Work Order 900547 included plastic retirement and 90 percent included other types of retirement, could you just say, okay, 10 percent of that total work order was plastic, and so we just remove 10 percent of the total cost of that work order?**

A. And I guess I don't think that's how you could do that, because I don't think putting the

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<sup>5</sup> *Id.* at Pp. 3-4.

<sup>6</sup> Transcript – Volume 1 (*Evidentiary Hearing 1-3-17*), Case Nos. GO-2016-0332 and GO-2016-0333, Tr. Pp. 101-102

<sup>7</sup> *Id.* at Pg. 102, Lns 6-18.

plastic in or out is necessarily part of an average cost of putting stuff in or taking pipe out or putting pipe into the ground. The - doing plastic may be an incremental cost versus the fixed cost of actually setting the job up in the first place. So I don't think that's a logical way to look at it, no.

**Q. But if you're trying to come up with a simple way to do it that doesn't require you to go back and determine how much it cost to replace every foot of plastic, isn't that a possible way you could do it, just do a general percentage, that the Commission could do it?**

A. It is a possible way. I wouldn't agree with it, but -

6. Staff fully acknowledges that there is little evidence in the records of the cases at issue<sup>8</sup> relating to a methodology to calculate the costs associated with the replacement of plastic pipe. Staff stated as much in its *Staff Report*.<sup>9</sup>

7. In Spire Missouri's Motion, it contends that Staff's Report is misleading in that Mr. Buck maintained throughout the evidentiary hearing that it was his opinion that

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<sup>8</sup> Commission Case Nos. GO-2016-0332, GO-2016-0333, GO-2017-0201, and GO-2017-0333.

<sup>9</sup> See *Staff Report*, at pg. 7.

this methodology would not be appropriate.<sup>10</sup> Staff has made no argument that Mr. Buck has endorsed this methodology on behalf of Spire Missouri. However, Spire Missouri cannot argue that there is no methodology proposed in the record; the very fact that Spire Missouri cites to the case record to outline Mr. Buck's disagreement with the methodology, points to it being part of the record.

8. To the best of Staff's knowledge, the methodology outlined above is the only means to calculate ineligible ISRS costs that was presented in the record. For that reason, Staff, in its *Staff Report*, found it reasonable to utilize this methodology to calculate the costs associated with replacing plastic pipe, *in this circumstance*.<sup>11</sup> For Spire Missouri to represent to the Commission that this methodology was not considered in the record of the remanded cases is a misrepresentation.

9. As stated above, Spire Missouri contends that Staff and OPC both violated the agreement that the parties proposed to the Commission, as well as the Commission's order approving that agreement, by introducing evidence that is not present in the record of the original cases, as supplemented by additional work order data. However, Staff DID NOT violate the agreement between the parties, nor the Commission's order approving it. The May 25<sup>th</sup> *Response to Order Directing Filing*, filed by Spire Missouri on behalf of all Parties, states as follows:

In the Opinion, the Western District reversed the Order to the extent that that the Order allowed ISRS cost recovery "for the replacement of plastic components that were not in a worn out or deteriorated condition." (Opinion, pp. 1-2) *On remand, the Parties believe that the Commission should decide what costs, if any, were recovered through ISRS charges*

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<sup>10</sup> *Spire Missouri's Motion To Strike Extra-Record Evidence Submitted by OPC and Staff*. pg. 5 (citations omitted).

<sup>11</sup> See *Staff Report*, at pg. 8.

*for the replacement of plastic components that were not worn out or in deteriorated condition[.]* (emphasis added).

As cited by Spire Missouri in its Motion, it further states:

The parties April 30, 2018, filing stated that the proposed findings and recommended decision would be based on the record in those cases as it stands today. *However, the Parties agree that the Commission has the authority to allow new evidence to be presented in determining the value of the replacement cost of plastic pipe in these matters.* In the Unanimous Stipulation and Agreement filed in Case Nos. GO-2017-0201 and GO-2017-0202, Spire Missouri agreed to make available “work order or other information in their possession necessary to make a determination of the amount of plastic pipe that was replaced.” *As such, the Parties request that they be allowed to utilize such information in forming their arguments.* (emphasis added).

10. Staff’s June 29<sup>th</sup> *Staff Report* presents Staff’s argument, utilizing a methodology to calculate the amount of ineligible costs originally included in Spire Missouri’s ISRS. This methodology was presented at the hearing for Case Nos. GO-2016-0332 and GO-2016-0333 on January 3, 2017, as evidenced by Staff’s citations to the record. In using the methodology outlined in the record, Staff utilized “work order or other information” provided by Spire Missouri that was “necessary to make a determination of the amount of plastic pipe that was replaced,” and presented what it believes to be an appropriate amount of costs that were recovered through ISRS charges for the replacement of plastic components that were not worn out or in deteriorated condition. It is Staff’s view that its actions were entirely consistent with the agreed upon procedures outlined in the Parties’ May 25<sup>th</sup> *Response* that were subsequently approved by the Commission and meets the directives in the Order of the Western District.

11. While Staff believes it has complied with the Parties’ May 25<sup>th</sup> agreement, and subsequent Commission Order, should the Commission so choose, it could receive

new evidence into the record.<sup>12</sup> The Western District's Order was a general remand. This is important as the type of remand has legal consequence; a general remand leaves all issues not conclusively decided open for consideration at the new trial.<sup>13</sup> The Court remanded this case for further proceedings consistent with its opinion; however, it did not make a conclusive decision as to a calculation of costs associated with plastic components improperly ascribed ISRS eligibility. Further, the Commission never made such a determination in the original proceedings.<sup>14</sup>

12. Nevertheless, should the Commission agree with Spire Missouri that Staff and OPC have presented improper extra-record evidence, and strike the sections identified in Spire's Motion, the Commission's only remaining option to comply with the Western District's Order would be to deny Spire Missouri's ISRS application in its entirety. Spire Missouri argues that the Commission should find that no disallowance or adjustment to its ISRS revenues is appropriate, because no incremental costs were incurred as a result of replacing plastic as part of its replacement programs compared to what would have been incurred to reuse such plastic.<sup>15</sup> This argument asks the Commission to find that plastic components not worn out or deteriorated be assigned ISRS eligibility because Spire Missouri's replacement strategy was cheaper; it is an

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<sup>12</sup> *Butcher v. Main*, 426 S.W.2d 356, 358 (Mo. 1968).

<sup>13</sup> *Id.*

<sup>14</sup> "Ultimately, it was unnecessary for the Commission to determine the value of the 'patches' [referencing the plastic pipe] because the Commission found that the 'patches' were an integral part of the replacement of the cast iron and steel segments of the line and should be included in total as part of the ISRS." Pp. 2-3, *Order Approving Reconciliation*, Case No. GO-2016-0332 and GO-2016-0333, EFIS No. 84.

<sup>15</sup> *Spire Motion* pg.2

argument is clearly contrary to Western District's Order.<sup>16</sup> In fact, the Western District articulated that the prudence of Spire Missouri's replacement approach was not a question before it to decide.<sup>17</sup>

13. The Commission may approve an ISRS petition [only] if it "finds that a petition complies with the requirements of sections 393.1009 to 393.1015."<sup>18</sup> The Western District found that the assignment of ISRS eligibility to plastic components that are not worn out or deteriorated violates section 393.1009(5)(a). Therefore, in order for the Commission to comply with the Court's mandate it must adjust Spire Missouri's ISRS revenues to exclude recovery of the costs of replacing plastic components that are not ISRS eligible. Absent any evidence to calculate what those costs may be, the Commission's only remaining option would be to deny Spire Missouri's ISRS

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<sup>16</sup> No party contested the fact that the plastic mains and service lines replaced were not in a worn out condition. (PSC v. Office of Pub. Counsel (In re Laclede Gas Co.), 539 S.W.3d 835, 5 (Mo. App. 2017)).

The plastic main and service line replacements were not merely de minimis. *Id.* at pg. 5, fn. 4.

Assigning ISRS eligibility to plastic pipes that are not worn out or deteriorated by evaluating an entire neighborhood system as a singular unit finds no support in the plain language of section 393.1009(5)(a). *Id.* at pg. 5-6.

Section 393.1009(5)(a) does not allow ISRS eligibility to be "bootstrapped" to components that are not worn out or deteriorated simply because they 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., by changing the depth of the components or system pressure) which necessitates the replacement of additional components. *Id.* at pg. 6, fn. 5.

The Commission's order did not identify "a single 'state or federal safety requirement' that mandated the replacement of the plastic mains and service lines or, for that matter, replacement of the neighborhood systems as a whole." *Id.* at pg. 6.

"ISRS-eligibility under section 393.1009(5)(a) is dependent on a project being imposed on a gas utility by a government-mandated safety requirement, and it is the existence of that obligation that provides the only motivation of incentive relevant to [the Court's] analysis." *Id.* at pg. 7.

<sup>17</sup> "While Laclede's replacement strategy may laudably produce a safer system, the question squarely before us is not whether its chosen approach is prudent but rather whether the replacement of plastic components that were not in a worn out or deteriorated condition are ISRS-eligible." (PSC v. Office of Pub. Counsel (In re Laclede Gas Co.), 539 S.W.3d 835, 5 (Mo. App. 2017)).

<sup>18</sup> Section 393.1015.1(4) RSMo.

applications in their entirety, as they would not comply with Sections 393.1009 to 393.1015.

**WHEREFORE**, Staff prays that the Commission will deny Spire Missouri's *Motion to Strike Extra-Record Evidence Submitted by OPC and Staff*, and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

**/s/ Mark Johnson**

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 27<sup>th</sup> day of July, 2018, to all counsel of record.

**/s/ Whitney Payne**