

**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-2016-0332**
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-2016-0333**
Replacement Surcharge in its Laclede Gas)
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 System) **File No. GO-2017-0202**
Replacement Surcharge in its Laclede Gas)
Service Territory)

In the Matter of the Application of Spire Missouri)
Inc. to Change its Infrastructure System) **File No. GO-2018-0309**
Replacement Surcharge in its Spire Missouri)
East Service Territory)

In the Matter of the Application of Spire Missouri)
Inc. to Change its Infrastructure System) **File No. GO-2018-0310**
Replacement Surcharge in its Spire Missouri)
West Service Territory)

**POSITION STATEMENT OF THE
OFFICE OF THE PUBLIC COUNSEL**

COMES NOW the Office of the Public Counsel (“OPC”), by and through undersigned counsel, and for its *Position Statement*, states as follows:

I. Remand Matters

a. Potential Refund:

- i. What costs, if any, should Spire be required to refund pursuant to the Missouri Western District Court of Appeals Opinion remanding Spire Missouri East's and West's 2016 and 2017 ISRS?

Spire should be required to refund the entire amount of revenue it collected under the ISRSs that were collected from customers as a result of Case Nos. GO-2016-0332, GO-2016-0333, GO-2017-0201, and GO-2017-0202. Spire's verified application in each of these cases requested recovery for the costs relating to the replacement of plastic pipes. As the Western District noted in its November 21, 2017 opinion, Spire did not contest the fact that these pipes were not worn out or deteriorated.¹ The Court further found "that recovery of the costs for plastic components that are not worn out or in a deteriorated condition is not available under ISRS[.]"² Therefore, Spire's application in each case was materially non-compliant with the governing ISRS statutes. RSMo. Section 393.1015.2(4) states:

[i]f the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, the commission **shall** enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1009 to 393.1015.(emphasis added).

The logical converse of this statute is that if the petition **does not** comply with the requirements of sections 393.1009 to 393.1015, the commission **shall not** enter an order authorizing the corporation to impose an ISRS. Because Spire's application (petition) did not comply with the requirements of sections 393.1009 to 393.1015 –

¹ *PSC v. Office of Public Counsel (In re Laclede Gas Co.)*, 539 S.W.3d 835, 839 (Mo. App. W.D. 2017).

² *Id.* at 841.

due to the fact that Spire included the cost of ineligible plastic pipes for recovery – the Commission was not permitted to authorize Spire to impose an ISRS and hence Spire was not permitted to collect *any* revenue. Consequently, the revenue that Spire did collect under the guise of its non-compliant ISRS must be returned to its consumers in its entirety.

b. Potential Costs:

- i. What costs, if any, were recovered through Spire Missouri East’s and West’s 2016 and 2017 ISRS for the replacement of ineligible plastic components not in a worn out or in a deteriorated condition?

OPC witness John Robinett testifies that the costs Spire recovered through Spire Missouri East’s and West’s 2016 and 2017 ISRS for the replacement of ineligible plastic components not in a worn out or deteriorated condition are those he calculated in his direct testimony.³ Specifically, Mr. Robinett recommended a refund amount of \$1,930,298 for Laclede customers for Case Nos. GO-2016-0332 and GO-20170201; and \$3,094,724 for MGE customers for Case Nos. GO-2016-0333 and GO-2017-0202 to cover costs relating to the replacement of ineligible plastic components not in a worn out or deteriorated condition.⁴

c. Methodology:

- i. What is the appropriate methodology for making this determination?

The appropriate methodology for determining the costs Spire recovered through Spire Missouri East’s and West’s 2016 and 2017 ISRS for the replacement

³ Robinett Direct pgs. 3-5.

⁴ Robinett Direct pg. 5.

of ineligible plastic components not in a worn out or in a deteriorated condition is the method discussed in the direct testimony of OPC's witness John Robinett.⁵ Specifically, Mr. Robinett reviewed the Commission Staff's supporting work papers for the amount of plant additions in each of the four cases, applied the Western District's cited percentages to the plant additions, and then calculated the difference between the annual authorized revenue requirement and the adjusted annual revenue requirement for each case to determine the amount of disallowed cost for recovery of plastic pipe replacement.⁶

- ii. Factually, what is the amount of plastic components not in a worn out or in a deteriorated condition replaced for each ISRS period?

As noted by the Western District's opinion issued on November 21, 2017, Spire did not contest the fact that the plastic pipes it sought recovery for were not worn out or in a deteriorated condition.⁷ On remand, Spire has failed to supply any competent evidence to otherwise prove that the plastic components it continues to seek recovery for are in a worn out or deteriorated condition. As such, the only possible conclusion (given that Spire as the movant bears the burden of proof) is to say that *all* of the plastic components Spire abandoned were not worn out or in a deteriorated condition. Given this, OPC contends that the amount of plastic components not in a worn out or in a deteriorated condition replaced can be determined for each ISRS period by

⁵ Robinett Direct pgs. 3-5.

⁶ Robinett Direct pg. 3.

⁷ *In re Laclede at 839.*

multiplying the amount of plant additions in each of the four cases by the percentage of plastic piping found in the Western District's opinion at footnote four.⁸

d. Rate Design:

- i. To the extent such ineligible costs exist, how should they be returned to ratepayers?

The OPC recommends the ineligible costs that Spire has collected need to be refunded to its customers in the form of a line-item refund. The OPC notes its concern, as laid out in the testimony of its witness John Robinett,⁹ that if the Commission uses the refund to reduce the current ISRS request for Spire Missouri East and West then the current ISRS request may be driven negative, which has the potential to violate Section 393.1012.1. RSMo.

II. 2018 Matters

a. Compliance

- i. Is Spire's ISRS filing compliant with the ISRS statutes Sections 393.1009 through 393.1015?

As laid out in the testimony of OPC's witness Robert Schallenberg,¹⁰ Spire's Application filing in the 2018 cases is not compliant with ISRS statutes Sections 393.1009 through 393.1015. Specifically, Spire has continued to request reimbursement for costs to replace plastic components that are not worn out or deteriorated, which the Western District has found is ineligible.¹¹ In addition, Spire

⁸ Robinett Direct pg. 3.

⁹ Robinett Direct pg. 6.

¹⁰ Schallenberg Direct pgs. 2-3.

¹¹ PSC v. Office of Public Counsel (In re Laclede Gas Co.), 539 S.W.3d 835, 841 (Mo. App. W.D. 2017)

has provided no competent evidence to show that *any* of the pipes that it seeks compensation for are worn out in a deteriorated condition.¹² Consequently, Spire's request for an ISRS should be denied and the cases dismissed.

This recommendation is consistent with the statutory mandate that the Commission's authority is limited to approving a petition if it "finds that a petition complies with the requirements of sections 393.1009 to 393.1015" *See* Section 393.1015.1(4) RSMo. The statute does not contemplate a process wherein the Commission approves or rejects a portion of a petition.

b. Potential Costs

- i. What costs should Spire Missouri be permitted to collect through its 2018 ISRS filing?

The Commission should reject Spire's petitions in their entirety since the Commission can approve only those petitions that comply with the ISRS statutes. A corrected Commission Order on remand would dismiss both petitions and all costs requested in the petitions.

Spire should not be permitted to collect *any* costs through its 2018 ISRS filing as its filings are not compliant with the statute. However, to the extent that the Commission permits the recovery of some costs, Spire should definitely not be permitted to recover the cost related to the replacement of ineligible plastic components.

¹² Spire's sole argument that the cast iron and steel pipes it retired are worn out or in a deteriorated condition is the age of the pipes themselves. However, age standing alone is not an adequate determination of whether plant in service is worn out or depreciated.

c. Rate Design

i. How should Spire Missouri's 2018 ISRS rates be calculated?

The OPC maintains that Spire should not receive an ISRS and hence no rates should be set. However, if the Commission permits the recovery of some costs, Spire's rates should be calculated such that they exclude the cost related to the replacement of ineligible plastic components.

WHEREFORE, the Office of the Public Counsel respectfully submits the forgoing *Position Statement*.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 24th day of August, 2018.

/s/ John Clizer