



IN THE \_\_\_\_\_ JUDICIAL CIRCUIT, \_\_\_\_\_ COUNTY, MISSOURI

Judge or Division:	MoPSC Case Number: GO-2016-0332 and GO-2016-0333	
Plaintiff/Petitioner:  Spire Missouri Inc.	Appellate Number:	<input type="checkbox"/> Filing as an Indigent
	Date of Judgment/Decree/Order: (ATTACH A COPY) September 20, 2018	Court Reporter:
vs.	Date Post Trial Motion Filed: September 28, 2018	<input type="checkbox"/> Sound Recording Equipment
Defendant/Respondent:  Missouri Public Service Commission	Date Ruled Upon: October 17, 2018	The Record on Appeal will consist of: ____ Legal File only or <input checked="" type="checkbox"/> Legal File and Transcript

**FILED**

NOV 14 2018

Missouri Public Service Commission

5:03 am KIT

(Date File Stamp)

**Notice of Appeal to Missouri Court of Appeals - Civil**

District:  Western  Eastern  Southern

Notice is given that Spire Missouri Inc. appeals from the judgment/decree/order entered in this action on September 20, 2018

Appellant's Name (If multiple, list all or attach additional pages)  Spire Missouri Inc.	Respondent's Name (If multiple, list all or attach additional pages)  Missouri Public Service Commission
Address 700 Market Street Saint Louis Mo. 63101	Address 200 Madison Street PO Box 360 Jefferson City, Mo. 65102
Appellant's Attorney/Bar Number (If multiple, list all or attach additional pages)  Michael C. Pendergast, Mo. Bar No. 31763 Rick Zucker, Mo. Bar No. 49211	Respondent's Attorney/Bar Number (If multiple, list all or attach additional pages)  Shelley Bruggemann, Mo. Bar No. 52173
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Brief Description of Case (May be completed on a separate page)  
  
Application of Laclede Gas Company (n/k/a Spire Missouri Inc.) to Change its Infrastructure System Replacement Surcharge (ISRS) in its Missouri Gas Energy (n/k/a Spire West) and Laclede Gas (n/k/a Spire East) service territories

Issues Expected To Be Raised On Appeal (May be completed on a separate page. Appellant is not bound by this list.)  
  
The Public Service Commission's erroneous determination that certain costs incurred by Laclede Gas Company (n/k/a Spire Missouri, Inc) were not eligible for recovery through its ISRS mechanism because some plastic facilities were retired or replaced in connection with various ISRS projects. Such a determination was erroneous because the undisputed evidence on the record showed: (a) that the retirement or replacement of such plastic facilities served to decrease rather than increase the level of ISRS charges sought by the Company, (b) the method relied upon by the Commission to quantify the amount of ISRS costs and charges that allegedly resulted from such plastic retirements or replacements did not, according to its own proponents, make any attempt to ascertain what impact such retirements actually had on ISRS costs and charges; and (c) that the method relied upon by the Commission to quantify the impact of plastic retirements on ISRS charges did not comply with the legal guidance given by this Court in its remand instructions.

Signature of Attorney or Appellant *By: Diana C. Cault*  
*Rick Zucker* #50527  
Date  
11-15-2018

**Certificate of Service on Persons other than Registered Users of the Missouri eFiling System**

I certify that on November 15, 2018 (date), a copy of the foregoing was sent to the following by facsimile, hand-delivery, electronic mail or U.S. mail postage prepaid to their last known addresses.

Missouri Public Service Commission

Marc Poston, Acting Division Director -- Office of the Public Counsel

Rick Zucker <sup>By:</sup> Diana Cauto  
Appellant or Attorney for Appellant

**Directions to Clerk**

Transmit a copy of the notice of appeal and all attached documents to the clerk of the Court of Appeals and to any person other than registered users of the eFiling system in a manner prescribed by Rule 43.01. Clerk shall then fill in the memorandum below. See Rule 81.08(i). Forward the docket fee to the Department of Revenue as required by statute.

**Memorandum of the Clerk**

I have this day served a copy of this notice by  regular mail  registered mail  certified mail  facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I have transmitted a copy of the notice of appeal to the clerk of the Court of Appeals, Western District.

Docket fee in the amount of \$70.00 was received by this clerk on 11/15/2018 (date) which will be disbursed as required by statute.

No docket fee was received because:

a docket fee is not required by law under \_\_\_\_\_ (cite specific statute or other authority).

a motion to prosecute the appeal in forma pauperis was received on \_\_\_\_\_ (date) and was granted on \_\_\_\_\_ (date).

11/15/2018  
Date

Kim Happp  
Clerk

Additional Parties and Attorneys

List every party involved in the case not listed on page 1, indicate the position of the party in the circuit court (e.g. plaintiff, defendant, intervenor) and in the Court of Appeals (e.g. appellant or respondent) and the name of the attorney of record, if any, for each party. Attach additional pages to identify all parties and attorneys if necessary.

Party Name	Attorney Name
Office of the Public Counsel (Intervenor)	Marc Poston
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Party Name	Attorney Name
Address	Address
City, State, Zip Code	City, State, Zip Code
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## STATEMENT OF THE ISSUES

(As Required by Section 386.510 RSMo)

Appellant Spire Missouri Inc. will raise the following issues on appeal:

Spire Missouri challenges the lawfulness and reasonableness of the Public Service Commission's September 20, 2018 Report and Order on Remand in Case Nos. GO-2016-0332 and GO-2016-0333 in that the Commission erroneously determined that certain costs incurred by Laclede Gas Company (n/k/a Spire Missouri, Inc) were not eligible for recovery through its ISRS mechanism because some plastic facilities were retired or replaced in connection with various ISRS projects.

Such a determination was erroneous because the undisputed evidence on the record showed: (a) that the retirement or replacement of such plastic facilities served to decrease rather than increase the level of ISRS charges sought by the Company, and (b) the method relied upon by the Commission to quantify the amount of ISRS costs and charges that allegedly resulted from such plastic retirements or replacements did not, according to its own proponents, make any attempt to ascertain what impact such retirements actually had on ISRS costs and charges and did not otherwise comply with the legal guidance given by this Court in its remand instructions. The Commission also erred in summarily determining that the multiple engineering analyses relied upon by the Company to demonstrate the impact of plastic retirements on ISRS costs and charges was inadequate even though the Company analyzed the very projects that the Court relied on in its Opinion that remanded this case to the Commission and all of the testimony submitted by parties on the issue said that such analyses were representative of the results that would be expected across all ISRS projects.

**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 )  
Replacement Surcharge in its Missouri Gas )  
Energy Service Territory )

**File No. GO-2016-0332**

In the Matter of the Application of Laclede Gas )  
Company to Change its Infrastructure System )  
Replacement Surcharge in its Laclede Gas )  
Service Territory )

**File No. GO-2016-0333**

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**REPORT AND ORDER ON REMAND**

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**Issue Date:** September 20, 2018

**Effective Date:** October 1, 2018

**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 )

**APPEARANCES**

Appearing for **SPIRE MISSOURI, INC.:**

**Michael C. Pendergast**, Fischer & Dority, P.C., 101 Madison, Ste. 400,  
Jefferson City, Missouri, 65101.

**Rick Zucker**, Zucker Law LLC, 423 (R) South Main St., St. Charles, Missouri,  
63301

Appearing for **OFFICE OF THE PUBLIC COUNSEL:**

**Lera Shemwell**, Senior Public Counsel, and **John Clizer**, Associate Public Counsel,  
PO Box 2230, 200 Madison St., Ste. 650, Jefferson City, Missouri, 65102-2230.

Appearing for the **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

**Jeffrey A. Keevil**, Deputy Staff Counsel, **Mark Johnson**, Senior Counsel, and  
**Whitney Payne**, Associate Counsel, PO Box 360, 200 Madison Street,  
Jefferson City, Missouri 65102.

**SENIOR REGULATORY LAW JUDGE:** Michael Bushmann

# REPORT AND ORDER ON REMAND

## I. Procedural History

On September 30, 2016, Laclede Gas Company filed applications and petitions with the Missouri Public Service Commission (“Commission”) to change its Infrastructure System Replacement Surcharge (“ISRS”) in its Missouri Gas Energy and Laclede Gas Service territories (collectively, “Spire Missouri”)<sup>1</sup>. Spire Missouri requested an adjustment to its ISRS rate schedule to recover costs incurred in connection with infrastructure system replacements made during the period March 1, 2016 through October 31, 2016. The Office of the Public Counsel (“OPC”) filed a motion requesting that the Commission reject the petition or schedule an evidentiary hearing. The Commission held an evidentiary hearing on January 3, 2017 (“1<sup>st</sup> hearing”).

On January 18, 2017, the Commission issued a Report and Order permitting Spire Missouri to file new tariffs to recover certain ISRS revenues, including plastic pipe replacements. That Report and Order is attached hereto as Attachment A. OPC appealed the Report and Order to the Missouri Western District Court of Appeals (WD80544), challenging the Commission’s decision that certain plastic pipe replacements were eligible ISRS costs.

On November 21, 2017, the Court of Appeals issued an opinion (WD80544) which held that recovery of costs for replacement of plastic components that are not worn out or in a deteriorated condition is not available under ISRS. The Court reversed the Commission’s Report and Order “as it relates to the inclusion of the replacement costs of the plastic components in the ISRS rate schedules, and the case is remanded for further

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<sup>1</sup> The company subsequently underwent a corporate reorganization and changed its name to Spire Missouri, Inc. with East and West service territories.

proceedings consistent with this opinion”.<sup>2</sup> The Court’s opinion is attached hereto as Attachment B. On March 7, 2018, the Court of Appeals issued the mandate in the appeal after the Supreme Court of Missouri denied transfer.

In compliance with the Court of Appeals’ opinion remanding these cases back to the Commission for further proceedings, the Commission conducted oral arguments and an evidentiary hearing to receive additional evidence.<sup>3</sup> In total, the Commission admitted the testimony of ten witnesses and 29 exhibits into evidence and took official notice of several documents. Post-hearing briefs were filed on September 6, 2018, and the case was deemed submitted for the Commission’s decision on that date when the Commission closed the record.<sup>4</sup>

## **II. Findings of Fact**

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Laclede Gas Company changed its name to Spire Missouri, Inc. on August 30, 2017. Spire Missouri is an investor-owned gas utility providing retail gas service to large portions of Missouri through its two operating units or divisions, Spire Missouri East (f/k/a Laclede Gas Company) and Spire Missouri West (f/k/a Missouri Gas Energy).<sup>5</sup>

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<sup>2</sup> *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 841 (Mo. App. 2017), *reh’g and/or transfer denied* (Dec. 14, 2017), *transfer denied* (Mar. 6, 2018).

<sup>3</sup> Transcript (“Tr.”), Volume 3.

<sup>4</sup> “The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument.” Commission Rule 4 CSR 240-2.150(1).

<sup>5</sup> Amended Report and Order, *In the Matter of the Laclede Gas Company’s Request to Increase Its Revenues for Gas Service*, issued March 7, 2018, File No. GR-2017-0215, p. 5, 11.

2. Spire Missouri is a “gas corporation” and a “public utility”, as each of those phrases is defined in Section 386.020, RSMo 2016.

3. The Office of the Public Counsel (“OPC”) “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”<sup>6</sup> OPC “shall have discretion to represent or refrain from representing the public in any proceeding.”<sup>7</sup> OPC did participate in this matter.

4. The Staff of the Missouri Public Service Commission (“Staff”) is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.<sup>8</sup>

5. An ISRS is a statutorily authorized rate adjustment mechanism tool utilized by eligible gas corporations to recover the cost of certain infrastructure replacements by establishing and updating a surcharge on a customer’s bill.<sup>9</sup> A qualifying gas corporation files an ISRS petition with the Commission seeking authority to recover the depreciation expense and return associated with eligible net plant additions, as well as amounts associated with property taxes for those additions, outside of a general rate case.<sup>10</sup>

6. Staff performs an ISRS audit when a petition to change an ISRS is filed.<sup>11</sup> By statute, Staff may file a report of its audit within 60 days from the time an ISRS petition is filed.<sup>12</sup>

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<sup>6</sup> Section 386.710(2), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

<sup>7</sup> Section 386.710(3), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

<sup>8</sup> Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

<sup>9</sup> Staff Ex. 6 (1<sup>st</sup> hearing), Oligschlaeger Rebuttal, p. 3.

<sup>10</sup> *Id.*

<sup>11</sup> Staff Ex. 3 (1<sup>st</sup> hearing), Sommerer Direct, Schedule DMS-d2.

<sup>12</sup> Section 393.1015.2(2), RSMo 2016.

7. On September 30, 2016, Spire Missouri filed applications and petitions (“Petitions”) seeking an adjustment to its ISRS rate schedule for its East and West service territories to recover costs incurred in connection with eligible infrastructure system replacements made during the period March 1, 2016 through October 31, 2016.<sup>13</sup>

8. Spire Missouri attached supporting documentation to its Petitions for the plant additions completed since the last approved ISRS change. This included documentation identifying the type of addition, utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense.<sup>14</sup> The company also provided estimates of capital expenditures for projects completed through October 2016<sup>15</sup>, which were subsequently replaced with updated actual cost information and provided to Staff and OPC.<sup>16</sup>

9. Spire Missouri also attached tables to its Petitions identifying the state or federal safety requirement, with a citation to a state statute or Commission rule, mandating each work order.<sup>17</sup>

10. The Commission conducted an evidentiary hearing on January 3, 2017, and the Commission issued its Report and Order on January 18, 2017, concluding that the plastic pipe was an integral component of the worn out and deteriorated cast iron and steel pipe, so Spire Missouri could recover the cost of replacing the plastic pipe.<sup>18</sup>

11. OPC filed a notice of appeal, challenging the Commission’s decision that certain plastic pipe replacements were eligible ISRS costs.

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<sup>13</sup> Laclede Ex. 4 and 5 (1st hearing), p. 2.

<sup>14</sup> Laclede Ex. 4 and 5 (1st hearing), Appendix A and B.

<sup>15</sup> *Id.*

<sup>16</sup> Staff Ex. 2 (1st hearing), Schedule JKG-d1, p. 4.

<sup>17</sup> Laclede Ex. 4 and 5 (1<sup>st</sup> hearing), Appendix C.

<sup>18</sup> Report and Order, File Nos. GO-2016-0332 and GO-2016-0333, p. 20.

12. In its briefs on appeal, OPC requested three times that the Court of Appeals remand the case back to the Commission with instructions to approve temporary rate adjustments designed to flow through to Spire Missouri's customers the excess amounts that were collected by Spire Missouri, plus interest, pursuant to Section 386.520.2(2), RSMo.<sup>19</sup>

13. The Missouri Western District Court of Appeals issued an opinion (WD80544) on November 21, 2017, which held that recovery of costs for replacement of plastic components that are not worn out or in a deteriorated condition is not available under ISRS. The Court reversed the Commission's Report and Order "as it relates to the inclusion of the replacement costs of the plastic components in the ISRS rate schedules, and the case is remanded for further proceedings consistent with this opinion".<sup>20</sup> The Court's order did not include instructions regarding a temporary rate adjustment. Spire Missouri and the Commission applied for rehearing and transfer to the Supreme Court, which were denied, and the Court of Appeals issued its mandate on March 7, 2018.

14. On December 13, 2017, several parties in Spire Missouri's then-pending general rate cases, GR-2017-0215 and GR-2017-0216 ("rate cases") filed a Partial Stipulation and Agreement to resolve certain issues, including ISRS. The entire text of the ISRS section states "As required by Commission rules, the Company's current ISRS shall be reset to zero upon the effective date of new rates in this proceeding. Plant in service

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<sup>19</sup> Commission Ex. A, Initial Brief of the Office of the Public Counsel, p. 5-6, 36-37; Commission Ex. B, Reply Brief of the Office of the Public Counsel, p. 27.

<sup>20</sup> *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 841 (Mo. App. 2017), *reh'g and/or transfer denied* (Dec. 14, 2017), *transfer denied* (Mar. 6, 2018).

additions for inclusion in a future ISRS shall be limited to additions subsequent to September 30, 2017.”<sup>21</sup>

15. On March 7, 2018, the Commission issued an Amended Report and Order in the rate cases stating that the Partial Stipulation and Agreement was not objected to, so it became unanimous. The Commission approved the partial stipulation and ordered the parties to comply with those terms. The Amended Report and Order was ordered to become effective on March 17, 2018.<sup>22</sup>

16. On April 19, 2018, new rates for Spire Missouri became effective in the rate cases, which incorporated into base rates eligible costs previously reflected in Spire Missouri’s ISRS.<sup>23</sup> The existing ISRS was reset to zero.<sup>24</sup>

17. After these cases were remanded, Spire Missouri provided all work order authorizations for projects totaling over \$25,000, except for open blanket work orders. A blanket work order is a work order related to ongoing projects that will not close in a certain period of time.<sup>25</sup>

18. Staff reviewed all of the work order authorizations provided by the company to determine the feet of main and service lines replaced and retired by the type of pipe (plastic, cast iron, steel, etc.). Staff applied the actual individual plastic main and services line percentages to the work order cost to determine the value of the replacement of plastic pipe for the work order. Staff did not remove any amounts for work orders that were

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<sup>21</sup> Partial Stipulation and Agreement, *In the Matter of Laclede Gas Company’s Request to Increase Its Revenues for Gas Service*, GR-2017-0215, and *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy’s Request to Increase Its Revenues for Gas Service*, GR-2017-0216, p. 6.

<sup>22</sup> Amended Report and Order, *In the Matter of Laclede Gas Company’s Request to Increase Its Revenues for Gas Service*, GR-2017-0215, and *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy’s Request to Increase Its Revenues for Gas Service*, GR-2017-0216, March 7, 2018.

<sup>23</sup> Order Approving Tariff in Compliance with Commission Order, *In the Matter of Laclede Gas Company’s Request to Increase Its Revenues for Gas Service*, GR-2017-0215, and *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy’s Request to Increase Its Revenues for Gas Service*, GR-2017-0216, issued April 4, 2018.

<sup>24</sup> Section 393.1015.6, RSMo 2016.

<sup>25</sup> Ex. 101, Bolin Direct, p. 3-4.

associated with relocations required by a governmental authority, encapsulation work orders, and meter and regulator replacement work orders.<sup>26</sup>

19. For work order authorizations that Spire Missouri did not provide, i.e., those less than \$25,000 and blanket work orders, Staff calculated an average of plastic mains and service lines replaced for the work order authorizations that had actual information provided and applied that percentage to work order authorizations that were not provided.<sup>27</sup>

20. Using this methodology to calculate the replacement costs for plastic pipes, Staff determined that Spire Missouri collected ineligible replacement costs through its ISRS in the amounts of \$827,159 for Spire Missouri West and \$2,283,628 for Spire Missouri East.<sup>28</sup>

21. In evaluating Spire Missouri's work orders, Staff did not consider any cost savings resulting from Spire Missouri's replacement program. Staff only looked at the percentage of plastic pipe replaced.<sup>29</sup>

22. Staff's witnesses provided credible testimony on the correct methodology for determining the costs of ineligible plastic pipe replacements, and Staff's evidence on this issue was the best evidence presented at the hearing. OPC also presented evidence of the replacement costs for plastic pipes, but Staff's calculations were based on more work orders and are more accurate.<sup>30</sup>

23. Some of the plastic pipes that Spire Missouri replaced or retired in place are not worn out or in a deteriorated condition.<sup>31</sup> Spire Missouri did not conduct a review to

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<sup>26</sup> Ex. 101, Bolin Direct, p. 4.

<sup>27</sup> Ex. 101, Bolin Direct, p. 4.

<sup>28</sup> Ex. 101, Bolin Direct, Schedule KKB-d8.

<sup>29</sup> Tr. Vol. 3, p. 451.

<sup>30</sup> Tr. Vol. 3, p. 452.

<sup>31</sup> Tr. Vol. 3, p. 368.

determine if that plastic pipe was worn out or deteriorated before replacing it.<sup>32</sup> The polyethylene plastic pipe that Spire Missouri uses should last indefinitely.<sup>33</sup>

24. Spire Missouri's work order authorization sheets did not explain if a main or service line being replaced was worn out or deteriorated.<sup>34</sup>

25. Spire Missouri did not provide sufficient information for Staff to determine whether any plastic pipe being replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.<sup>35</sup>

26. Spire Missouri has not attempted to calculate the amount of plastic pipe replaced that was worn out or in a deteriorated condition.<sup>36</sup>

27. Spire Missouri presented an analysis of ten work orders purporting to show that in nine of those work orders the company reduced, rather than increased, its replacement costs by retiring plastic facilities where it was not operationally or economically feasible to reuse them.<sup>37</sup>

### **III. Conclusions of Law and Discussion**

Spire Missouri is a "gas corporation" and "public utility" as those terms are defined by Section 386.020, RSMo 2016.<sup>38</sup> Spire Missouri is subject to the Commission's jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo. The Commission has the authority under Sections 393.1009 through 393.1015, RSMo, to consider and approve ISRS requests such as the one proposed in the Petitions. Since

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<sup>32</sup> Tr. Vol. 3, p. 369.

<sup>33</sup> Tr. Vol. 3, p. 375.

<sup>34</sup> Tr. Vol. 3, p. 449.

<sup>35</sup> Tr. Vol. 3, p. 466.

<sup>36</sup> Tr. Vol. 3, p. 483.

<sup>37</sup> Ex. 3, Hoferlin Direct, p. 3-5, Schedule CRH-D1.

<sup>38</sup> Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

Spire Missouri brought the Petitions, it bears the burden of proof.<sup>39</sup> The burden of proof is the preponderance of the evidence standard.<sup>40</sup> In order to meet this standard, Spire Missouri must convince the Commission it is “more likely than not” that its allegations are true.<sup>41</sup> Section 393.1015.2(4), RSMo, states that “[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”.

The issues for determination in this remand proceeding are 1) what costs, if any, were recovered through Spire Missouri East and West’s 2016 ISRS for the replacement of ineligible plastic components not in a worn out or in a deteriorated condition, and 2) whether Spire Missouri should be required to refund any of those costs?

### **Ineligible expenses**

Section 393.1012.1, RSMo, provides that a gas corporation may petition the Commission to change its ISRS rate schedule to recover costs for “eligible infrastructure system replacements”, which is defined in Section 393.1009(3), RSMo.<sup>42</sup> In order to be

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<sup>39</sup> “The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue”. *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

<sup>40</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

<sup>41</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109-111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

<sup>42</sup> “Eligible infrastructure system replacements”, gas utility plant projects that:

- (a) Do not increase revenues by directly connecting the infrastructure replacement to new customers;
- (b) Are in service and used and useful;
- (c) Were not included in the gas corporation's rate base in its most recent general rate case; and
- (d) Replace or extend the useful life of an existing infrastructure.

eligible, the project must meet the definition of a “gas utility plant project” in Section 393.1009(5), RSMo.<sup>43</sup>

The issue presented in these cases is whether certain plastic main and service line replacements installed by Spire Missouri are eligible for ISRS recovery. Spire Missouri’s position is that it should be able to collect all of the ISRS charges it requested in the Petitions, since all the projects and work orders included are ISRS-eligible. Staff and OPC recommend that the Commission issue an order that excludes all plastic pipe replacements from the amounts Spire Missouri is permitted to recover, although they differ somewhat on the method for calculating those ineligible expenses.

In its review of the Commission’s previous Report and Order, the Missouri Western District Court of Appeals stated that Section 393.1009(5)(a) “sets forth two requirements for component replacements to be eligible for cost recovery under ISRS: (1) the replaced components must be installed to comply with state or federal safety requirements and (2) the existing facilities being replaced must be worn out or in a deteriorated condition.”<sup>44</sup> The Court found that there was no evidence of a state or federal safety requirement that mandated the replacement of plastic mains and service lines, and that Spire Missouri’s “plastic mains and service lines were not in a worn out or deteriorated condition”.<sup>45</sup> The

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<sup>43</sup> “Gas utility plant projects” may consist only of the following:

(a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition;

(b) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and

(c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the gas corporation.

<sup>44</sup> *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 839 (Mo. Ct. App. 2017), *reh'g and/or transfer denied* (Dec. 14, 2017), *transfer denied* (Mar. 6, 2018)

<sup>45</sup> *Id.* at p. 839-840.

Court concluded “that recovery of the costs for replacement of plastic components that are not worn out or in a deteriorated condition is not available under ISRS”, so the Commission’s Report and Order was reversed and “remanded for further proceedings consistent with this opinion”.<sup>46</sup>

After conducting a hearing on remand to take further evidence, that evidence showed that Spire Missouri’s plastic pipe replacements were not worn out or deteriorated. The polyethylene plastic pipe that Spire Missouri uses should last indefinitely, but Spire Missouri did not conduct a review to determine if that plastic pipe was worn out or deteriorated before replacing it. Spire Missouri’s work order authorization sheets did not explain if a main or service line being replaced was worn out or deteriorated, and the company made no attempt to calculate the amount of plastic pipe replaced that was worn out or in a deteriorated condition. In addition, Spire Missouri did not provide sufficient information to determine whether any plastic pipe being replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.

Spire Missouri argues that no adjustment to the company’s ISRS charges should be made in connection with plastic pipe replacements because those replacements resulted in no incremental increase in ISRS costs, but instead decreased them. Thus, there are no ineligible costs to exclude. In support of this argument, Spire Missouri presented an analysis of ten work orders purporting to show that in nine of those work orders the company reduced, rather than increased, its replacement costs by retiring plastic facilities where it was not operationally or economically feasible to reuse them. Spire Missouri asks the Commission to extrapolate from those nine work orders and reach a similar result in the

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<sup>46</sup> *Id.* at p. 841.

hundreds of work orders that Spire Missouri did not analyze. However, Spire Missouri's analysis is based on far too few work orders for such a conclusion to be reasonable. Spire also argues that no adjustment to its ISRS revenues or costs is appropriate under ratemaking and cost allocation principles. This argument improperly intermixes the issue of prudence, which is determined in a general rate proceeding, with eligibility, which is the appropriate determination in an ISRS proceeding. So, Spire Missouri's arguments regarding prudence, cost avoidance, and economic efficiency are irrelevant to the Commission's conclusion in these cases.

In the future, if Spire Missouri wishes to renew its argument that plastic pipe replacements result in no cost or a decreased cost of ISRS, it should submit supporting evidence to be considered, such as, but not limited to, a separate cost analysis for each project claimed, evidence that each patch was worn out or deteriorated, or evidence regarding the argument that any plastic pipe replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.

Here, Staff provided the best evidence of a methodology to calculate the costs of those ineligible plastic pipe replacements. Staff reviewed all of the work order authorizations provided by the company to determine the feet of main and service lines replaced and retired by the type of pipe, and then applied the actual individual plastic main and services line percentages to the work order cost to determine the value of the replacement of plastic pipe for the work order.

Based on Staff's adjustments to exclude the ineligible costs related to plastic pipe replacements, Spire Missouri collected ineligible replacement costs through its ISRS in the amounts of \$827,159 for Spire Missouri West and \$2,283,628 for Spire Missouri East.

## Refunds

In general, the Commission does not have the authority to issue an order requiring a pecuniary reparation or refund.<sup>47</sup> The Commission lacks authority to retroactively correct rates or take into account overpayments when fashioning prospective rates.<sup>48</sup> If the Commission were to determine that a refund of ISRS costs is appropriate, it would need specific statutory authority to order those refunds. Two potential sources of authority for refunds of ISRS revenues are the ISRS statutes relating to gas utilities, Sections 393.1009-393.1015, and the general statute regarding temporary rate adjustments following the appeal of a Commission order establishing new rates or charges, Section 386.520.2.

In the ISRS statutes, refunds are authorized in two provisions of Section 393.1015.<sup>49</sup> Subsection 5 of that statute allows annual adjustments of ISRS charges after a reconciliation process to recover or refund the difference between ISRS revenues actually collected and appropriate ISRS revenues as ordered by the Commission. Subsection 8 permits the Commission to offset a utility's future ISRS revenues to account for any eligible ISRS costs previously included in an ISRS that were disallowed during a general rate proceeding. None of these situations are similar to the current situation, where the Commission is being asked to determine if ISRS costs should be classified as ineligible after those costs were already considered in a general rate case and found to be prudent. Section 393.1015 does not provide a specific legal basis for refunds in the cases now before the Commission.

In addition, the ISRS statutes do not allow superseded ISRS tariffs to be corrected retroactively after a general rate case includes those infrastructure costs in base rates. In a

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<sup>47</sup> *DeMaranville v. Fee Fee Trunk Sewer, Inc.*, 573 S.W.2d 674, 676 (Mo. App. 1978); *State ex rel. & to Use of Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044 (Mo. 1943).

<sup>48</sup> *State ex rel. City of Joplin v. Pub. Serv. Comm'n of State of Mo.*, 186 S.W.3d 290, 297 (Mo. App. 2005).

<sup>49</sup> See also Section 393.1012.1, RSMo.

recent Missouri Supreme Court case involving Missouri-American Water Company<sup>50</sup>, the court stated:

Under section 393.1000(3), when a utility company seeks to recover costs of an infrastructure system replacement project by a surcharge, those costs cannot also be recovered as part of the company's general base rate. After the company has its next general rate case, however, those costs must be incorporated in the utility's base rate and can no longer provide the basis for a surcharge. § 393.1006.6(1). The surcharge then must be reset to zero.

That is what has occurred here. After the surcharge that is the subject of this proceeding was approved, and while that approval was on appeal, MAWC filed for and was granted a general base rate increase that included the infrastructure costs that had been the subject of the surcharge at issue here. At that point, the amounts that were previously part of the disputed surcharges were included in the new base rate.

This appeal involves only Public Counsel's challenge to the surcharge. Because the costs that formed the basis of the disputed surcharge have been incorporated into MAWC's base rate, the base rate supersedes the surcharge. The surcharge has been reset to zero, and superseded tariffs cannot be corrected retroactively.<sup>51</sup> (emphasis added)

Applying the reasoning of the Court to the cases now before the Commission, the Spire ISRS tariffs that the Commission previously approved were no longer effective when those ISRS costs were incorporated into base rates and reset to zero during Spire's most recent general rate case pursuant to Section 393.1015.6(1). The tariffs approved as part of that general rate case are now effective and supersede the ISRS surcharge from those previous ISRS cases. Even where the Commission now determines that some of those prior costs were improperly classified as ISRS-eligible, after a general rate case the Commission cannot correct those previous tariffs retroactively by applying a refund prospectively in future ISRS cases.<sup>52</sup>

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<sup>50</sup> The statutes governing ISRS for water utilities, Sections 393.1000-393.1006, are substantially similar to the ISRS statutes for gas utilities for purposes of the issue being discussed here.

<sup>51</sup> *Matter of Missouri-Am. Water Co.*, 516 S.W.3d 823, 828 (Mo. 2017), *transfer denied* (May 30, 2017), *reh'g denied* (May 30, 2017).

<sup>52</sup> This determination should not be considered as a restriction to the normal reconciliation process required in Section 393.1015, subsections 5 and 6.

Section 386.520, RSMo, does not provide an independent legal basis for ordering a refund of any ISRS surcharges in these cases. Subsection 2(2) of that statute says that in the event a court determines that a Commission order was improperly decided on an issue affecting rates, then the Commission “shall be instructed on remand to approve temporary rate adjustments” to return to customers any excess amounts that had been collected by the utility, plus interest. However, the opinion of the Court of Appeals did not include such a specific instruction, even though OPC had requested such an instruction three times in its briefs before the Court. Since the Court of Appeals did not include that instruction in its opinion, it did not invoke the statutory provisions of Section 386.520 to grant the Commission the authority to order such a refund.

The Commission concludes that it does not have the statutory authority to order a refund of any ineligible costs for plastic pipe replacements from Spire Missouri’s previous ISRS cases.

#### **IV. Decision**

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Spire Missouri has not met, by a preponderance of the evidence, its burden of proof to demonstrate that the portion of work orders described in the Petitions and supporting documentation relating to the replacement of plastic pipe components comply with the requirements of Sections 393.1009 to 393.1015, RSMo. Although those plastic pipe replacement costs are ineligible for ISRS cost recovery, the Commission also concludes it does not have the statutory authority to order a refund of those costs.

Since the Commission is issuing orders in related Spire Missouri ISRS cases concurrently with these cases, the Commission will, consistent with those other orders, make this order effective on October 1, 2018.

**THE COMMISSION ORDERS THAT:**

1. In compliance with the opinion of the Missouri Western District Court Appeals, the Commission has determined that Spire Missouri, Inc.'s Petitions in these cases included ineligible costs related to the replacement of plastic pipe components, and that the Commission lacks statutory authority to refund those ineligible costs. As a result of its conclusions in these cases, the Commission will take no further action.

2. This order shall become effective on October 1, 2018.



**BY THE COMMISSION**

A handwritten signature in blue ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, Hall, and  
Coleman, CC., concur.  
Rupp, C., dissents.

Bushmann, Senior Regulatory Law Judge

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

**SPIRE MISSOURI INC'S APPLICATION  
FOR REHEARING OR RECONSIDERATION  
OF THE COMMISSION'S REPORT AND ORDER ON REMAND**

COMES NOW Spire Missouri Inc. (f/k/a Laclede Gas Company, and referred to herein as "Spire Missouri" or "Company"), on behalf of itself and its two operating units, Spire Missouri East ("Spire East") and Spire Missouri West ("Spire West," f/k/a Missouri Gas Energy) and, pursuant to 386.500.1 RSMo, applies to the Commission for rehearing of its September 20, 2018 Report and Order on Remand (the "Remand Order") in Case Nos. GO-2016-0332 and 0333 (the "2016 Cases"), or for reconsideration of the Remand Order.<sup>1</sup> In support thereof, Spire Missouri states as follows:

1. In the Remand Order, the Commission determined that Spire East and West failed

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<sup>1</sup> The Commission's order in Case Nos. GO-2017-0201 and 0202 is addressed below.

to demonstrate by a preponderance of the evidence that the cost to replace certain plastic pipe was ISRS-eligible, and found the costs of those plastic pipe replacements in the 2016 Cases collected in rates to be approximately \$3.1 million, consisting of \$2,283,628 for Spire East, and \$827,159 for Spire West.<sup>2</sup> The Commission further determined that it does not have the statutory authority to order a refund of ineligible ISRS costs from prior ISRS cases.<sup>3</sup> As a result, the Commission decided that it would take no further action in the 2016 cases, including no action to refund any ISRS costs previously collected by the Company.<sup>4</sup>

2. In Case Nos. GO-2017-0201 and 0202 (the “2017 Cases”), the Commission issued an Order Denying Request to Modify Commission Order, in which the Commission denied Public Counsel’s request to modify the order in the Company’s rate cases to apply Public Counsel’s view of the effect of the Western District Court of Appeals’ November 21, 2017 Opinion (the “Opinion”) on the 2017 Cases.

3. In a separate order in Spire East and West’s current ISRS cases, Case Nos. GO-2018-0309 and 0310 (the “Current Cases”), the Commission excluded approximately \$4 million in ISRS revenues that it considered to be related to the cost to replace ISRS-ineligible plastic. By separate pleading, the Company is seeking rehearing of that order.

4. The Company does not take issue with the final outcome of the Remand Order, or of the order in the 2017 Cases, as both permit the Company to retain its previously collected ISRS revenues. If no party seeks rehearing or appeal of the Remand Order, the Company is willing to avoid the rehearing and appeal process in these cases, and address its disagreement on the cost issue in the Current Cases. However, Spire Missouri is filing this application in order to preserve

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<sup>2</sup> Remand Order, p. 13

<sup>3</sup> Id., p. 16

<sup>4</sup> Id., p. 17

its rights to challenge the Commission's decision in these cases with respect to the amount of cost incurred to replace plastic facilities. To the extent that the Commission's decision regarding the cost to replace plastic facilities also applies in the 2017 Cases, Spire Missouri is filing this application in those cases as well.

5. As indicated above, the Remand Order arose from the Opinion, which reversed and remanded the Commission's Report and Order in the 2016 Cases, to the extent that the Commission allowed ISRS charges to recover the cost to replace plastic components that were not in a worn out or deteriorated condition. The Opinion instructed the Commission to determine what costs, if any, were incurred to replace such plastic facilities. The Court recognized that replacement of worn out or deteriorated facilities will at times require the replacement of nearby components that are not worn out or deteriorated.<sup>5</sup> The Court also recognized that some plastic facilities may themselves be worn out or deteriorated.<sup>6</sup> The Court made no finding, however, as to the amount of cost to replace plastic facilities that were not worn out or in a deteriorated condition, or how to determine that amount, but instead remanded the cases to the Commission to determine the extent of those costs.

6. The Company respectfully submits that sufficient reasons exist for the Commission to grant rehearing under 386.500.1 RSMo, or to reconsider the Remand Order. Pursuant to Section 386.500.2, Spire Missouri must set forth each ground it considers to be unlawful, unjust or unreasonable or risk losing its right to raise that ground on appeal. Therefore, the Company is including all of its grounds in this application. Specifically, the Company submits that the Remand Order was unreasonable as it was not based on competent and substantial evidence, and because it reached a conclusion that was contrary to the overwhelming weight of the evidence. In doing so,

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<sup>5</sup> Opinion, p. 6

<sup>6</sup> *Id.*, p. 5

the Remand Order failed to follow the court's instructions on remand to determine the cost incurred to replace plastic that was not worn out or in a deteriorated condition. The Remand Order also erred in arbitrarily disregarding a long history of permitting audit sampling where it is not feasible or practical to review every item. This decision also violated the Company's due process right to a full and fair hearing held at a meaningful time and in a meaningful manner.

7. Spire Missouri agrees that the primary directive of this remand proceeding was to determine the cost to replace plastic facilities that were not worn out or deteriorated. Meeting this directive calls for a cost calculation and not an evaluation of prudence. The evidence produced by the Company in the remand proceeding, and its arguments in this pleading, focus on cost and not on prudence.

8. In companion ISRS cases tried at the same time on the same facts as the above referenced cases, the Commission found that "most of the cast iron pipes being replaced are over a hundred years old. Cast iron pipes are unsafe to use because they undergo a process called graphitization, in which the iron leaches out making the pipe subject to cracking and leaking. The steel pipe being replaced is bare and not cathodically-protected, so those pipes corrode relatively quickly and need to be replaced."<sup>7</sup>

9. The Commission also found that state or federal safety requirements mandate Spire Missouri to implement a cast iron and bare steel main replacement program. The Commission concluded that cast iron and steel pipes are worn out or deteriorated, and were replaced to comply with these requirements, so the costs of this program are ISRS eligible. Specifically, the Commission stated as follows:

"With regard to replacements of cast iron and steel pipes, *the evidence showed that Spire Missouri is required to implement a program to replace cast iron and*

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<sup>7</sup> Case Nos. GO-2018-0309 and 0310, Report and Order dated September 20, 2018, p. 6, par. 13; Tr. Vol. 3, p. 373-374

*steel pipes* and identified the state or federal safety requirement, with a citation to a state statute or Commission rule, mandating each work order. The evidence also showed that cast iron pipes are unsafe to use because they are subject to cracking and leaking, and the steel pipe being replaced is bare and not cathodically-protected, so those pipes corrode relatively quickly and need to be replaced. *The Commission concludes that the cast iron and steel pipes were replaced to comply with state or federal safety requirements and were worn out or in a deteriorated condition, so they are eligible for cost recovery under ISRS.*<sup>8</sup> (emphasis supplied)

10. Given the evidence and the Commission findings, there is no doubt that Spire Missouri incurs ISRS-eligible costs to replace cast iron and bare steel. This cost to replace cast iron and bare steel to comply with the mandate is the baseline ISRS-eligible cost of the program. The question the Court asked the Commission to answer is how much more above the baseline cost did Spire Missouri incur to bypass, replace or retire plastic, in addition to replacing cast iron and bare steel. So, for example, if replacing only the cast iron and bare steel would have cost \$1.0 million, then \$1.0 million would be the baseline ISRS cost customers would have paid. If replacing cast iron, bare steel and plastic would have cost \$1.2 million, the Commission could find that the incremental cost to replace plastic would be \$200,000.

11. Spire Missouri was the only party in the case to submit evidence that actually addressed the cost incurred to replace plastic. The evidence provided by two experienced Company engineers showed that the Company first addressed the matter in the 2011 time frame when it decided to ascertain the most cost-effective method to implement its systematic main replacement program.<sup>9</sup> The Company gathered information from industry groups and its own field crews, and decided that a program that featured directional boring of plastic main to bypass the old cast iron and interspersed plastic was the most economic method available. The Company

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<sup>8</sup> Case Nos. GO-2018-0309 and 0310, Report and Order dated September 20, 2018, p. 13.

<sup>9</sup> Ex. 3, p. 10, lines 14-22

experimented on some early projects and concluded that the new approach was very effective.<sup>10</sup> With respect to service lines, the Company determined that it would transfer, or reuse, service lines where operationally and economically feasible, and renew (i.e. replace) them where this was not.<sup>11</sup> Since a main replacement required the reattachment of service lines to the main line regardless of the method chosen, the witnesses testified that the decision to replace plastic service lines did not change the fiscal superiority of the new replacement method.<sup>12</sup> Neither Staff nor OPC disputed these facts.

12. In short, replacing cast iron, bare steel and some plastic by bypassing the old main lines was less expensive than replacing just the cast iron and bare steel portions of the system. Recall that in the example above, replacing only the cast iron and bare steel would have cost \$1.0 million. The Company found that replacing cast iron, bare steel and plastic costs \$950,000. Since replacing cast iron, bare steel and plastic costs \$50,000 *less* than replacing just the cast iron and bare steel, there is no incremental cost to replace plastic.

13. Certainly Spire Missouri believes its approach to cast iron and bare steel replacement has been prudent. However, as emphasized above, this exercise is not about prudence; it's about the cost to replace plastic. And that cost is zero.

14. Returning to the evidence, the only party that provided competent and substantial evidence on the cost to replace plastic was Spire Missouri, through the testimony of its two engineers that the cast iron and steel main replacement programs were engineered to be cost efficient. The only party who supported its testimony with analysis was Spire Missouri, who analyzed 10 different projects, nine of which had been handpicked by OPC to support its original

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<sup>10</sup> Tr. 389-91.

<sup>11</sup> Lauber Direct, Ex. 4, p. 5, lines 1-10; Tr. 367

<sup>12</sup> Ex. 3, p. 4, lines 3-9; Ex. 6, p. 6, line 11 to p. 7; Tr. 390-91.

case. The 10 samples showed an average cost that was 5% less than the baseline cost that retained plastic instead of replacing it.

15. The Company witnesses testified that the 10 samples were representative of the larger population of ISRS-eligible safety projects. Staff witness Sommerer testified that the “likely result” of extending the same analysis to all ISRS projects would be “to show that *virtually all* of the plastic replacements resulted in a cost reduction.”<sup>13</sup> The Company’s analysis clearly confirmed the position of the Company engineers, the only technical experts to testify in the case.<sup>14</sup> The analysis proved that no additional cost is driven by the replacement of plastic. In light of the agreement of Spire Missouri and Staff on this point, we sincerely urge the Commission to revisit and revise the Remand Order’s errant finding that Spire’s information was inadequate.

16. The other parties freely admitted that they did not consider what actually drove the costs. Instead they merely allocated cost based on a percentage of plastic compared to other materials. This mathematical exercise is completely irrelevant to determining the actual cost to replace plastic over and above the cost to replace cast iron and bare steel.

17. Competent and substantial evidence is evidence that, if believed, has probative force upon the issues.<sup>15</sup> It is evidence which the trier of fact could reasonably use to make its findings.<sup>16</sup> In this case, even though the Commission believed that Staff got its math right, Staff’s answer carries no probative force on the question of how much it cost to replace plastic. Within the context of an ISRS-eligible safety project that involves replacing cast iron and bare steel, the task here was to ferret out the incremental cost, if any, to replace plastic facilities that are not ISRS-eligible. The Commission cannot reasonably place any value on the simple proportion presented

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<sup>13</sup> Tr. p. 498, line 23 to p. 499, line 2 (*emphasis supplied*).

<sup>14</sup> The Safety Staff also has engineers, but Staff chose not to proffer any testimony from them.

<sup>15</sup> *Missouri Real Estate Appraisers Comm'n v. Funk*, 306 S.W.3d 101, 106 (Mo.App.W.D.2010)

<sup>16</sup> *Spencer v. Zobrist*, 323 S.W.3d 391 (W.D. Mo. 2010)

by Staff to accomplish this task. This is especially true where Staff itself placed no value on its own methodology.<sup>17</sup>

18. The Remand Order is unlawful because it fails to comply with the legal principles set forth in the Opinion, including the specific remand instructions given to the Commission. Specifically, it fails to use the only methodology that actually quantified the impact of plastic retirements on ISRS costs, instead using Staff's methodology that even its own proponent freely conceded was never designed to -- and in fact did not -- address the ultimate question of the cost impact of replacing plastic facilities. The Remand Order resulted in ISRS costs being excluded even though they were not in any way caused by the replacement or retirement of plastic facilities -- a result that is clearly not in keeping with the Court's remand instructions.

19. Despite the evidence provided by the Company, the Remand Order concluded that the number of projects and work orders analyzed by the Company were "far too few" to support the proposition that no cost was incurred to retire plastic facilities.<sup>18</sup> The Remand Order does not explain, however, what academic or scientific literature was consulted, what expert advice was received, or how it otherwise arrived at this extra-record conclusion. All of these critical considerations are simply unexplained and unknown. In the end, while the Remand Order properly recognized the validity of the engineering analysis approach taken by the Company, it arbitrarily

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<sup>17</sup> As the Company discussed at length in its Brief, Staff witness Bolin repeatedly criticized the percentage method endorse by the Commission in its order, and testified on cross-examination that she did not know whether or to what extent the percentage of plastic retired on a particular project actually affected the ultimate cost of that project. In fact, it was apparent that Ms. Bolin could not identify the cost drivers for any of the projects for which she excluded costs based on these simple percentages. (Tr. 451, 469-71). Staff witness Sommerer also conceded that the percentage of plastic in the old main had no effect on the cost of installing the new main, because the cost to install new main that bypassed the old main would be the same regardless of the amount of interspersed plastic in the old main. (Tr. 497-498). This truism, which was not even acknowledged by the Commission, directly contradicts Staff's percentage-based methodology.

<sup>18</sup> Remand Order, p. 13

determined that approach was inadequate solely because it was not performed on all ISRS projects.<sup>19</sup>

20. The rejection of a representative sample to support the Company's position on the cost impact of plastic retirements is also at odds with the Commission's widely accepted use of such samples when evaluating large data bases like those involved in an ISRS filing. Representative samples have been regularly used by internal and external auditors, including the Commission Staff, to evaluate financial transactions that are too numerous to audit individually.<sup>20</sup> They have also been used to evaluate the operational characteristics of utility infrastructure, including their fitness for a particular purpose. For example, one of the most critical components of utility infrastructure are the meters employed by gas and electric utilities use to measure usage for billing. For many years now, the Commission has permitted these utilities to use a statistical sampling of a limited number of meters to verify the accuracy of a significantly larger population of meters in the same vintage or class.<sup>21</sup> Given this routine use of representative sampling for various regulatory purposes, given the Company's testimony that its sample of ISRS projects was

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<sup>19</sup>The Commission apparently utilized the same new standard in upholding Staff's proposal to remove the cost of blanket work orders in the same proportion as the plastic it found in the main replacement programs. Again, the record evidence showed that these blanket work orders, which were not related to the Company's cast iron or bare steel replacement program, contained numerous small projects covering facilities that needed to be replaced because they had become worn out or were in a deteriorated condition. All of this work is ISRS-eligible, as verified by Company witness Glenn Buck's analysis of more than 100 individual tickets in a typical blanket work order. His analysis determined that every replacement was done for a safety-related reason, including leaks, corrosions and removal of copper pig tails. (Ex. 6, p. 6). The Remand Order simply ignored the Company's sample evidence and instead adopted a Staff approach that was unsupported by the competent and substantial evidence on the record, and was arbitrary and capricious.

<sup>20</sup>See e.g. *Re: United Telephone Company*, Case Nos. TR-93-181 and TO-93-309, Report and Order issued October 27, 1993, for a discussion of various sampling methods used to calculate Cash Working Capital in utility rate cases.

<sup>21</sup>See *Re: Union Electric Company, d/b/a AmerenUE*, Case No. EO-2001-521, *Order Granting Variance* issued September 11, 2001; *Re: Atmos Energy Corporation*, GE-2003-0007, *Order Granting Variance* issued August 20, 2002, *Aquila, Inc.*, GE-2006-0330, *Order Granting Variance* issued March 30, 2006.

representative of the results that would be experienced across other ISRS projects, and given the Staff's acknowledgment that the cost savings shown by the sampling was likely representative of the larger universe of projects, the Remand Order's summary rejection of the sample employed to assess the cost impact of plastic retirements was arbitrary, capricious and unreasonable.<sup>22</sup>

21. The Remand Order also erred in introducing this entirely new standard prohibiting sampling after the record closed on September 6. By doing so, the Company was denied any opportunity to present evidence to rebut this determination or to otherwise address it. The end result is that the Company was denied its due process right to have a full and fair hearing on this issue at a meaningful time and in a meaningful manner.<sup>23</sup>

22. Under the circumstances, the Company provided sufficient evidence for the Commission to comply with the Missouri Court of Appeals' remand instruction to assess the impact of plastic retirements on ISRS costs. The Company requests that the Commission evaluate the evidentiary record anew and find that no incremental costs resulted from the plastic retirements.

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<sup>22</sup>The Commission's determination that the representative sample used by the Company was inadequate and that the Company should have conducted such an analysis on all ISRS projects established a standard that could not possibly have been satisfied by the Company given the time constraints of these cases. There were only 5 business days between the date the Commission decided to hold a new evidentiary hearing on the plastic issue and the date when testimony was due. In that limited amount of time, it was challenging enough for the Company to produce four witnesses and conduct 9 additional engineering analyses of ISRS projects. It would have been impossible within that time frame to conduct additional analyses on hundreds of additional ISRS projects. Adding this element of futility to the new standard employed by the Commission for excluding ISRS costs in these cases only underscores the arbitrary and capricious nature of the Commission's decision.

<sup>23</sup>As the Western District Court of Appeals has observed, due process requires that administrative hearings be fair and consistent with rudimentary elements of fair play. *State ex rel Fischer v. Public Service Commission*, 645 S.W.2d 39, 43 (Mo. App. W.D. 1983), citing *Tonkin v. Jackson County Merit System Commission*, 599 S.W.2d 25, 32-33[7] (Mo.App.1980) and *Jones v. State Department of Public Health and Welfare*, 354 S.W.2d 37, 39-40[2] (Mo.App.1962). One component of this due process requirement is that parties be afforded a full and fair hearing at a meaningful time and in a meaningful manner. *Id.*, citing, *Merry Heart Nursing and Convalescent Home, Inc. v. Dougherty*, 131 N.J.Super. 412, 330 A.2d 370, 373-374[7] (1974). Obviously, a hearing on a critical issue cannot be full, fair or meaningful when it is never held.

**WHEREFORE**, Spire Missouri respectfully requests that the Commission grant rehearing or reconsideration, and modify the Remand Order to find that no ISRS costs are attributable to the replacement or retirement of plastic facilities

Respectfully submitted,

SPIRE MISSOURI INC.

**/s/ Michael C. Pendergast (#31763)**

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### **CERTIFICATE OF SERVICE**

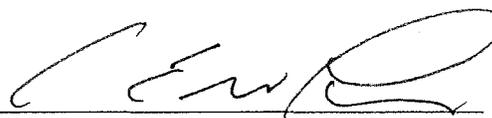
The undersigned certifies that a true and correct copy of the foregoing pleading was served on Staff and the Office of the Public Counsel, on this 28th day of September 2018 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

**/s/ Rick Zucker**

VERIFICATION

STATE OF MISSOURI     )  
  ) SS  
CITY OF ST. LOUIS     )

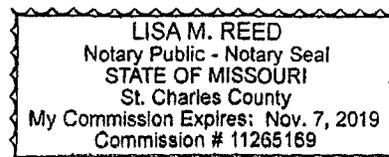
C. Eric Lobser, being duly sworn, on his oath states that he is Vice-President, Regulatory and Government Affairs, of Spire Missouri Inc., that he has read the foregoing application and that the matters set forth therein are true and correct to the best of his knowledge, information and belief.

  
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C. Eric Lobser

Subscribed and sworn to before me, a Notary Public, in the City of St. Louis, State of Missouri, this 28<sup>th</sup> day of September, 2018.

  
\_\_\_\_\_  
Notary Public, State of Missouri

My Commission expires on: November 7, 2019



**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 17<sup>th</sup> day of  
October, 2018.

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 )

**ORDER DENYING APPLICATIONS FOR REHEARING**

Issue Date: October 17, 2018

Effective Date: October 17, 2018

On September 20, 2018, the Missouri Public Service Commission issued a *Report and Order on Remand* effective October 1, 2018, regarding Spire Missouri Inc.'s application to change its infrastructure system replacement surcharge. The Office of the Public Counsel and Spire Missouri Inc. filed timely applications for rehearing.

Section 386.500.1, RSMo 2016, states that the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefor be made to appear." In the judgment of the Commission, the applications for rehearing do not demonstrate sufficient reason to rehear the matter. The Commission will deny the applications for rehearing.

**THE COMMISSION ORDERS THAT:**

1. The Office of the Public Counsel's Application for Rehearing is denied.

2. Spire Missouri Inc.'s Application for Rehearing or Reconsideration of the Commission's Report and Order on Remand is denied.

3. This order shall be effective when issued.



**BY THE COMMISSION**

A handwritten signature in blue ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and  
Coleman, CC., concur.

Bushmann, Senior Regulatory Law Judge

**MISSOURI PUBLIC SERVICE COMMISSION**

**October 17, 2018**

**File/Case No. GO-2016-0332 and GO-2016-0333**

**Missouri Public Service  
Commission**

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Commission**

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**Spire**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

*Sincerely,*



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.