

**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 REPLY**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”) and for its *Reply* in this matter states:

1. In response to the Commission’s Order Setting Procedural Schedule resulting from the Missouri Court of Appeals Western District’s reversal and remand of the Missouri Public Service Commission’s decision in Case Nos. GO-2016-0332 and GO-2016-0333, Spire Missouri, the Office of the Public Counsel (“OPC”) and Staff filed documents with the Commission on June 29, 2018. These documents reflected each party’s position as to the proper manner to calculate any amount to be flowed back to customers resulting from the inclusion of the costs of replacing plastic pipes, along with a recommendation

for how the amount calculated, if any, should be flowed back to Spire Missouri's customers. Staff in its *Report* has already expressed its position as to the proper calculation of dollars to be flowed back to Spire Missouri's customers determined by using the actual percentage of plastic pipe replaced, determined from the work orders provided by the Company, and applying the average percentage of plastic pipe replaced to those work orders not provided by the Company. On July 9, 2018, Staff updated the amounts originally recommended in its *Report* to reflect a corrected calculation based on the length of time the incorrect ISRS was in effect; presently Staff recommends the proper calculations of costs of replacing plastic pipe that were improperly included in Spire Missouri's ISRSs are: \$1,359,165 for Spire West and \$2,801,860 for Spire East. Additionally, Staff recommended that the amounts be tracked in an account for consideration in Spire Missouri's current ISRS filings, Case Nos. GO-2018-0309 and GO-2018-0310. Staff continues to support the method of calculation, proposed calculated amounts and method of refund outlined above.

### **STIPULATED FACTS**

2. Certain elements of the *Initial Brief of the Office of Public Counsel* and *Spire Missouri Inc.'s Initial Brief on Remand* are agreed to by all parties.

Those elements are:

- The Western District's remand applies to Case Nos. GO-2016-0332; GO-2016-0333; GO-2017-0201; and GO-2017-0202.
- Plastic pipe was replaced in the course of Spire Missouri's infrastructure replacements which was not in a worn out or deteriorated condition.

## RESPONSE TO SPIRE MISSOURI

3. Spire Missouri argues in *Spire Missouri Inc.'s Initial Brief on Remand* that no incremental increases in its ISRS have resulted from the incidental replacement of plastic pipe.<sup>1</sup> It also argues that there is no evidence on the record to permit a reasonable or appropriate quantification of the portion of the replacement costs attributable to plastic versus those attributable to steel or cast iron.<sup>2</sup> Spire Missouri attempts to relitigate its original arguments made before the Commission and the Western District by citing to the testimony of its witnesses Mark Lauber and Glenn Buck,<sup>3</sup> however, this proceeding is not the appropriate venue for these arguments as the Commission has been tasked with holding further proceedings consistent with the Western District's opinion; 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.<sup>4</sup> As such, it is Staff's belief that the only issues for the Commission to decide in this remand are:

1) What is the proper quantification of ineligible ISRS costs collected by Spire Missouri? And,

2) What is the appropriate methodology to return this amount to Spire's customers?<sup>5</sup>

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<sup>1</sup> *Spire Missouri Inc.'s Initial Brief on Remand* P. 2, 4, 8, 9, 10, and 13.

<sup>2</sup> *Spire Missouri Inc.'s Initial Brief on Remand* P. 3, 4, 10, 11, and 12.

<sup>3</sup> *Spire Missouri Inc.'s Initial Brief on Remand* Pp. 5-8.

<sup>4</sup> ***In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and in the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory; Public Service Commission v. The Office of Public Counsel***, Opinion filed: November 21, 2017, WD80544 (2017), Pg. 7.

<sup>5</sup> *Staff Report* P. 2.

The Company states that the only competent and substantial evidence to directly address the issue of cost shows that the Company's incidental replacement of plastic pipe did not cause the Company to incur incremental costs, but permitted it to avoid higher costs that would have otherwise been incurred.<sup>6</sup> Spire Missouri attempts to support this point using the theory of cost causation; however, the cost causation argument is misplaced due to the nature of a remanded proceeding.<sup>7</sup>

Spire Missouri's arguments amount to an attempt to justify the inclusion of replacement costs for plastic pipe in ISRS by making a showing that its actions were, in fact, prudent. Unfortunately, the Western District's opinion was based solely on its determination that replacements costs for plastic pipe do not satisfy the requirements found in the plain language of section 393.1009(5)(a).<sup>8</sup> In fact, the court clearly stated,

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.** In analyzing that proposition, we cannot ignore the plain language of the statute for 'convenience, expediency[,] or necessity' to conclude that the costs are eligible for recovery through the ISRS process. (emphasis added)(citations omitted)<sup>9</sup>

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<sup>6</sup> *Spire Missouri Inc.'s Initial Brief on Remand* P. 8.

<sup>7</sup> *Spire Missouri Inc.'s Initial Brief on Remand* P. 9.

<sup>8</sup> ***In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and in the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory; Public Service Commission v. The Office of Public Counsel***, Opinion filed: November 21, 2017, WD80544 (2017), Pg. 7-8.

<sup>9</sup> ***In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and in the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory; Public Service Commission v. The Office of Public Counsel***, Opinion filed: November 21, 2017, WD80544 (2017), Pg. 7 (internal citations omitted).

Further, the Court went on to state that nothing in its opinion should be construed as expressing any view on the Commission's consideration of the costs of replacing plastic pipe in the context of a general ratemaking case,<sup>10</sup> where prudence determinations would be made. The Commission must comply with the Western District's order, which clearly indicates that the cost of plastic must not be recovered through ISRS, regardless of the prudence of the costs incurred.<sup>11</sup> The Western District opinion does not say that the cost of plastic must or even may be compared to the savings in calculating disallowable amounts,<sup>12</sup> and this "red herring" of an argument should be disregarded by the Commission.

4. Whether the neighborhood replacement program is beneficial is not the question here, based on the Western District's opinion.<sup>13</sup> The quality of a program is not what is contemplated by the plain language of section 393.1009(5)(a). Spire Missouri's argument that the replacement of plastic pipe did not result in any incremental increase in ISRS charges, so the costs associated with the replacement of that plastic should be recovered

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<sup>10</sup> ***In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and in the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory; Public Service Commission v. The Office of Public Counsel***, Opinion filed: November 21, 2017, WD80544 (2017), Pg. 8.

<sup>11</sup> ***In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and in the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory; Public Service Commission v. The Office of Public Counsel***, Opinion filed: November 21, 2017, WD80544 (2017), Pp. 7-8.

<sup>12</sup> ***In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and in the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory; Public Service Commission v. The Office of Public Counsel***, Opinion filed: November 21, 2017, WD80544 (2017).

<sup>13</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." *Id.* at p. 7.

through ISRS<sup>14</sup> is not compliant with the Western District order. The opinion of the Western District is exceedingly clear that the cost of the replacement of plastic pipe that was not in a worn out or deteriorated condition cannot be included in ISRS (“recovery of the costs for replacement of plastic components that are not worn out or in a deteriorated condition is not available under ISRS”). If the Commission issues an order on remand consistent with Spire Missouri’s argument the order would be no different than the order already overturned by the Western District. Therefore, any revenues collected by Spire Missouri relating to replacement of plastic pipe through ISRS amounts to an improper over recovery, and must be calculated and refunded to ratepayers.<sup>15</sup>

5. Furthermore, Spire Missouri argues that the cost of plastic versus the cost of cast iron or steel cannot be reasonably or appropriately quantified based upon the evidence in the record.<sup>16</sup> This is precisely why the parties agreed to utilize “work order or other information in [Spire Missouri’s] possession necessary to make a determination of the amount of plastic pipe that was replaced.”<sup>17</sup> Staff used this information to develop its recommendation; tabulating the amount of plastic pipe that was replaced to the best of its ability, and calculating the value of replacement costs utilizing the only methodology

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<sup>14</sup> Tr. 245:5-9, Where OPC Counsel Marc Poston was questioning OPC witness Charles Hyneman on redirect and Mr. Hyneman stated that if plastic was found to be ineligible the only option was to not include any costs of that plant in ISRS.

<sup>15</sup> ***In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and in the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory; Public Service Commission v. The Office of Public Counsel***, Opinion filed: November 21, 2017, WD80544 (2017), Pp. 7, 1-2.

<sup>16</sup> *Spire Missouri Inc.’s Initial Brief on Remand* P. 3.

<sup>17</sup> *Response to Order Directing Filing*, Case Nos. GO-2016-0332 and GO-2016-0333, filed May 25, 2018.

contemplated in the record.<sup>18</sup> Spire Missouri also makes a broad-sweeping statement in its *Brief* that the Western District opinion does not mandate a disallowance or adjustment relating to the incidental replacement of plastic facilities.<sup>19</sup> However, the Western District's opinion clearly states that it reversed the Commission's order to the extent that it allowed cost recovery through adjustment to the ISRS rate schedule for the replacement of plastic components that were not in a worn out or deteriorated condition,<sup>20</sup> and remanded the case for further proceedings consistent with its opinion.<sup>21</sup> Spire Missouri installed new mains and service lines that, in part, replaced plastic pipe.<sup>22</sup> No party contests that plastic mains and service lines that were not worn out or deteriorated were replaced.<sup>23</sup> Therefore, the costs of installing new mains and service lines included in Spire Missouri's ISRS inherently include costs to replace plastic

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<sup>18</sup> Tr. 101: 16-102:13, OPC Counsel Marc Poston questioning Spire witness Glenn Buck on the stand proposed a methodology where the percentage of plastic retirement in each work order was determined and then removed as a methodology for excluding "ineligible" ISRS costs; Tr. 172:1-22, OPC Counsel Marc Poston asked Staff witness Kim Bolin if a methodology would work where a percentage of plastic replaced was determined in a work order and then that same percentage was removed from the work order costs; Tr. 179:1-10, OPC Counsel Marc Poston questioning Staff witness Mark Oligschlaeger as to whether a percentage of pipe that's plastic in a work order could be determined and removed would be a method for determining the amount of "ineligible" plastic included in the ISRS.

<sup>19</sup> *Spire Missouri Inc.'s Initial Brief on Remand* P. 3.

<sup>20</sup> ***In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and in the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory; Public Service Commission v. The Office of Public Counsel***, Opinion filed: November 21, 2017, WD80544 (2017), Pp. 1-2.

<sup>21</sup> ***In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and in the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory; Public Service Commission v. The Office of Public Counsel***, Opinion filed: November 21, 2017, WD80544 (2017), Pp. 8.

<sup>22</sup> *Bolin Rebuttal*, P. 7:1-8.

<sup>23</sup> ***In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and in the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory; Public Service Commission v. The Office of Public Counsel***, Opinion filed: November 21, 2017, WD80544 (2017), Pg. 5.

components that were not worn out or deteriorated. To agree with Spire Missouri's argument, that no disallowance or adjustment relating to the replacement of plastic facilities should be made, would result in an outcome that would not be consistent with the Western District opinion.

### **RESPONSE TO OPC**

7. Staff's recommended calculation is based on a full analysis of all available work orders pertaining to Spire Missouri's ISRS filings in each relevant case.<sup>24</sup> OPC alleges in its *Brief* that the Western District found that thousands of feet of plastic pipe were included in Spire Missouri's ISRS.<sup>25</sup> In contrast to Staff, OPC now bases its recommendation for the calculation of the appropriate amount to be recovered on the percentages cited to by the court in a footnote.<sup>26</sup> The calculations cited to by the Western District were originally performed by Staff witness Kim Bolin and attached to her testimony; these calculations were based upon an analysis of nine work orders attached to the testimony of OPC witness Charles R. Hyneman.<sup>27</sup>

8. OPC relies entirely on the nine work orders and the percentages Staff derived from them, even though Mr. Hyneman, while on the stand at the evidentiary hearing in Case Nos. GO-2016-0332 and GO-2016-0333, when presented with a hypothetical asking how to determine the amount of plastic given a specific scenario stated "That would be information the company would have, and that would be part of their allocation of costs to the non-ISRS/ISRS."<sup>28</sup>

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<sup>24</sup> *Staff Report* P. 8.

<sup>25</sup> *Initial Brief of the Office of the Public Counsel* Pp. 3-4.

<sup>26</sup> *Initial Brief of the Office of the Public Counsel* P. 6.

<sup>27</sup> *Bolin Rebuttal*, P. 7:1-8.

<sup>28</sup> Tr. 244:17-19.

He continues that, “I’m confident working with the company and the Staff; we could come to a reasonable allocation factor that we could all agree on.”<sup>29</sup> From these statements, it can be inferred that even OPC, at the time of the original evidentiary hearing, did not view the sample of work orders to be sufficient to perform a definitive calculation of the plastic costs that were improper for recovery under an ISRS. That OPC contemplated a more thorough review and definitive calculation is another reason why Staff’s method of analyzing all relevant work orders is more appropriate when determining the correct calculation.

9. It should be noted that OPC states in its *Brief* that “That [Western District] opinion held that recovery of the cost of replacement of plastic pipe was unlawful.”<sup>30</sup> This statement is not entirely accurate. The Western District stated that:

Our conclusion 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 is based solely on our determination that those costs do not satisfy the requirements found in the plain language of section 393.1009(5)(a). Nothing in this opinion should be construed as expressing any view on the Commission’s consideration of those costs in the context of a general ratemaking case.<sup>31</sup>

To be clear, the Western District found that the cost of replacement of plastic pipe which was not in a worn out or deteriorated condition could not be recovered through an ISRS. However, the Court articulates specifically that recovery of

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<sup>29</sup> Tr. 245:1-4.

<sup>30</sup> *Initial Brief of the Office of the Public Counsel* P. 6.

<sup>31</sup> ***In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory and in the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory; Public Service Commission v. The Office of Public Counsel***, Opinion filed: November 21, 2017, WD80544 (2017), Pp. 7-8.

those costs may be considered by the Commission in a general rate case. In fact, these costs were considered in Spire Missouri's most recent rate cases.<sup>32</sup>

10. However, Staff agrees with OPC that the Commission must adjust Spire Missouri's ISRS revenue requirements to account for the removal of the cost of replacement of plastic pipe that was not in a worn out or deteriorated condition. Further, Staff agrees that in complying with the Western District's mandate, the Commission should ensure that the costs of those replacements already included in ISRS recovery must somehow be refunded.<sup>33</sup> However, Staff's recommendations utilized all of the relevant work orders which Spire Missouri could provide, and based its calculations on a comprehensive review.<sup>34</sup> Staff's review results in the most accurate calculation of the cost of replacing plastic pipe that can be achieved given the circumstances, and should be utilized by the Commission.

11. Finally, OPC proposes in its *Brief* that the calculated replacement cost of plastic included in Spire Missouri's ISRS should be refunded to customers through a line item on customers' bills.<sup>35</sup> While this process may sound simple, it could prove to be overly difficult, as the customers who originally overpaid these ISRS costs may not be traceable due to the passage of time since the original ISRS cases, and changes to Spire Missouri's customer classes in their most recent rate cases. However, Commission Rules already provide for a process to return Commission ordered refunds to ratepayers, after an ISRS has been reset

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<sup>32</sup> *In the Matter of Spire Missouri, Inc.'s Request to Increase Its Revenues for Gas Service*, Case Nos. GR-2017-0215 and GR-2017-0216.

<sup>33</sup> *Initial Brief of the Office of the Public Counsel* Pp. 5-6.

<sup>34</sup> *Staff Report* P. 8.

<sup>35</sup> *Initial Brief of the Office of the Public Counsel* P. 8.

to zero.<sup>36</sup> Staff's proposal to track the amounts in an account for consideration in Spire Missouri's next ISRS filings (Case Nos. GO-2018-0309 and GO-2018-0310) is consistent with those rules, and is a more efficient manner to handle this remand.<sup>37</sup>

### **CONCLUSION**

12. In summary, Staff's recommendations are the most accurate, and the Commission should issue an order reflecting these recommendations. The replacement costs for plastic pipe not in a worn out or deteriorated condition included in ISRS by Spire Missouri in its 2016 and 2017 ISRS filings can and should be calculated. Staff's calculation of these amounts is \$1,359,165 relating to Spire West and \$2,801,860 relating to Spire East.<sup>38</sup> The proper manner of refund of these amounts is to track them in an account and consider them in Spire Missouri's 2018 ISRS filings (Case Nos. GO-2018-0309 and GO-2018-0310).<sup>39</sup>

**WHEREFORE**, for the foregoing reasons, Staff respectfully requests that the Commission accept this *Staff Reply*; approve the Staff's recommended amounts of \$1,359,165 relating to Spire West and \$2,801,860 relating to Spire East to be tracked and considered in Spire Missouri's 2018 ISRS filings (GO-2018-0309 and GO-2018-0310); and grant such further and other relief as is just in the circumstances.

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<sup>36</sup> 4 CSR 240-3.265(18).

<sup>37</sup> *Staff Report* Pp. 9-10.

<sup>38</sup> *Staff Notice Appendix A*.

<sup>39</sup> *Staff Report* Pp. 9-10.

Respectfully submitted,

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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**