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 Laclede Gas Service Territory	))))	**File No. GO-2016-0333**
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 Missouri Gas Energy Service Territory	))))	**File No. GO-2017-0201**
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-2017-0202**

SPIRE MISSOURI INC.'S INITIAL BRIEF 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 submits this Initial Brief on Remand pursuant to the Commission Order issued on June 5, 2018.

I. INTRODUCTION

On November 21, 2017, the Western District Court of Appeals issued its opinion in Case No. WD80544 (the "Opinion"), in which it reversed and remanded the Commission's Report and Order (the "Order") in the first two above-captioned ISRS proceedings (File Nos. GO-2016-0332 and 0333). By subsequent agreement approved by the Commission, the Company, the Staff of the Missouri Public Service Commission

("Staff") and the Office of the Public Counsel ("OPC") (collectively "the Parties") agreed that the findings in the Opinion would also apply to the 2017 ISRS cases (File Nos. GO-2017-0201 and 0202).[1] The Company also agreed that it would furnish additional work order information relating to these ISRS cases, which it did, but that information has not yet been offered by the Parties for inclusion in the record on remand. Except for this one item of potential additional information, the Parties have agreed that this matter on remand should be determined by the Commission on the basis of the record generated in File Nos. GO-2016-0332 and GO-2016-0333.[2]

In its Opinion, the Court reversed the Commission's Report and Order in File Nos. GO-2016-0332 and GO-2016-0333 as it "relates to the inclusion of the replacement costs of the plastic components in the ISRS rate schedules" and remanded the cases to the Commission for further proceedings consistent with its opinion.[3] Consistent with the Court's Opinion, the Parties recommended in their May 25, 2018 Response to Order Directing Filing that " . . . the Commission should decide what costs, *if any*, were recovered through ISRS charges for the replacement of plastic components that were not worn out or in deteriorated condition." (Emphasis supplied).

As discussed below, the only evidence on the record that addresses how the incidental replacement of plastic pipe may have impacted the amount of the Company's ISRS charges at issue in these proceedings shows that it has not resulted in *any* incremental increase in those charges. Instead, the evidence indicates that such incidental replacement has affirmatively *reduced* the Company's ISRS charges compared to what

[1] See the Unanimous Stipulation and Agreement submitted on April 18, 2017 and approved by the Commission on April 26, 2017 in File Nos. GO-2017-0201 and GO-2017-0202 on April 26, 2017.
[2] See Number Paragraph 2.A. of the Parties April 30, 2018 Response to Order Directing Filing.
[3] *Opinion*, page 8.

would have been incurred had the Company incorporated, rather than replaced, the plastic patches previously inserted into the cast iron and bare steel system.

Moreover, there is no evidence on the record to show how the Commission could reasonably and appropriately isolate or quantify what portion of the replacement costs underlying the Company's ISRS charges are attributable to the replacement of cast iron and bare steel facilities versus plastic facilities, even if one were to assume that there was a positive cost incurred with replacing the latter. In fact, the primary proponent of excluding some level of ISRS charges based on the incidental replacement of plastic pipe – namely, OPC – has never submitted evidence supporting a methodology that could be used for this purpose, despite having numerous opportunities to do so in multiple ISRS cases and two general rate case proceedings.

In short, the evidentiary record in these cases provides no basis for any kind of disallowance or adjustment relating to the incidental replacement of plastic facilities. Nor is one mandated by the Court's Opinion. While the Opinion made a number of general legal determinations regarding the recoverability of ISRS charges that may be incurred to replace plastic facilities, it made no findings regarding whether or to what extent those charges may have been impacted by the incidental replacement of plastic facilities. Nor did the Opinion abrogate the fundamental requirements that are applicable to all valid Commission Orders – specifically that the Commission's determinations be lawful and reasonable, be based on competent and substantial evidence on the record, not be arbitrary or capricious, and be respectful of the due process rights of the participating

parties. To the contrary, these bedrock principles were reaffirmed by the Court at the very outset of its Opinion.[4]

A disallowance of any portion of the ISRS charges at issue in these cases would run afoul of each and every one of these basic requirements. It would require that the Commission arbitrarily ignore the evidence showing that the Company's ISRS charges were not increased as a result of the incidental replacement of plastic pipe, and instead find, without any supporting evidence, that incremental costs were incurred. Such a disallowance would also require the Commission to make a finding as to the specific amount by which these ISRS charges were increased as a result of such activity, again without any evidence on the record providing a method for such a quantification. Specifically, there is no evidence showing how the relative replacement percentages of cast-iron, bare steel and plastic facilities in the work orders can be interpreted to quantify additional costs caused by the incidental replacement of plastic facilities.

Given these considerations, the Company respectfully submits that there is no evidentiary basis upon which the Commission could disallow or adjust any of the ISRS charges at issue in these proceedings on the grounds that such charges were increased, or were higher than they otherwise would have been, because the Company chose to replace cast iron and bare steel mains in a manner that incidentally replaced some plastic pipe that was not in a worn out or deteriorated condition. Nor is there any other basis for disallowing such costs. In fact, all of the ISRS charges at issue in these proceedings have been rebased, without challenge to their prudency

The lack of any evidentiary basis to justify a retroactive adjustment to these historical ISRS charges, however, does not mean that the Commission cannot respond in

[4]*Opinion*, page 3.

a positive and appropriate manner to the legal guidance provided in the Opinion regarding the ISRS eligibility of costs that might actually be incurred to replace plastic or other facilities that might not be in a worn out or deteriorated condition. This objective could be achieved in a separate proceeding. For purposes of the ISRS cases under review here, however, the Company submits that a finding that no adjustment is warranted conforms to the legal guidance provided by the Western District Court of Appeals in its Opinion and the other legal requirements for a valid Commission Order, while still ensuring that the Company's critical safety program is carried out in way that produces the best possible results for customers and the general public.

II. ARGUMENT

A. The only evidence on the record addressing the impact on ISRS charges indicates that the level of ISRS charges at issue in these proceeding was not increased as a result of the Company's incidental replacement of plastic pipe.

As previously noted, the Parties have agreed that the "Commission should decide what costs, *if any*, were recovered through ISRS charges for the replacement of plastic components that were not worn out or in deteriorated condition." (emphasis supplied). The only two witnesses to directly address this question in testimony were Company witnesses Mark Lauber and Glenn Buck. Mr. Lauber is the Company's Director of Health and Safety, Environmental and Crisis Management. (Ex. 3, pp. 1-2). He has been a practicing engineer for over thirty years and during that same time span has amassed substantial experience overseeing various natural gas pipeline construction, maintenance, safety compliance and risk assessment matters for the Company. (*Id*.) Mr. Buck is the Company's Director of Regulatory and Finance. He also has over thirty years of experience with the Company, most of it relating to regulatory finance matters. (Ex. 1, p. 1).

Based on their substantial experience with the operational, regulatory and financial aspects of the ISRS mechanism, both of these witnesses testified that there was no added cost associated with the incidental replacement of plastic facilities. To the contrary, they testified that reusing rather than replacing these plastic facilities would have been significantly more expensive than the one chosen by the Company. (Ex 3, pp. 10-11; Ex. 2, p.11).

Mr. Lauber discussed in detail why the Company's incidental replacement of plastic mains and services resulted in incremental savings rather than incremental costs. As he explained, this result is primarily a function of the physical differences between how plastic mains are installed today and how aged facilities were installed decades ago. As an example, the cast iron and steel mains being replaced as part of these ISRS projects are typically installed deeper than is required or necessary for plastic pipe. (Ex. 3, p. 10). In addition, these older mains are commonly located under pavement. When installing new plastic main, the Company seeks to avoid digging up pavement for both operational and financial reasons. (*Id*.)

Because of these realities, any attempt to utilize the plastic pipe that is being replaced would require tie-in connections at a greater depth and in different locations, often under pavement – all of which would have significantly increased cost. For example, an old cast iron main might be located in the street right-of-way six feet below the surface. The new plastic main, by contrast, is more likely to be installed in an easement between the sidewalk and the street, and at a depth closer to three feet. As a result, it is not economically feasible for the new plastic main to connect to any of the old main or any of its plastic segments. (Ex. 3, pp. 10-11).

Similar issues exist for service lines. In those instances where an existing plastic service line can be economically reconnected to a new main and be reused, the Company does so, as indicated by the substantial quantity of service lines that are, in fact, reused. This is demonstrated in Appendix A to Spire East's application in Case No. GO-2016-0333 under the heading "service transfer work orders." For Case No. GO-2016-0332, Spire West work order 800116, for example, shows that about 47 service lines were re-used, i.e. tied-over or transferred, versus only 4 that were replaced. In many instances, however, the old service lines are at a completely different location and depth than the new main, rendering a connection of the old service line to the new main impractical or prohibitively expensive in many instances. (Ex. 3, pp. 10-11).

Mr. Lauber's testimony was further confirmed by Company witness Glenn Buck who testified that most of the plastic interspersed throughout the Company's current cast iron system is buried under pavement. (Ex. 2, p. 11). As a result, the cost to uncover, reconnect, rebury and, repave the interspersed plastic would be much higher than abandoning it in place, thereby adding incremental cost and putting upward pressure on ISRS rates. (*Id.*). In fact, far from increasing the level of ISRS charges being sought by the Company, Mr. Buck testified that the incidental replacement of plastic pipe actually reduced those ISRS charges. As Mr. Buck testified, the retirement of plastic pipe as a part of the cast iron and bare steel replacement programs resulted in a reduction in the amount of the ISRS cost recovery sought in these cases through the recognition of lower depreciation expense. (Ex. 2, p. 11, lines 3-13). For just the projects identified by OPC witness Charles Hyneman, this depreciation-related reduction in ISRS charges was worth

approximately $53,000,[5] rising to well over $200,000 in reduced ISRS charges when the impact of all retirements is considered. (*Id.*; *see also* Ex.- 4, Appendix B, p. 3; Ex. 5, Appendix A, p.1; Tr. 97, line 25). Thus, any notion that the Company's approach increased costs should be rejected by the Commission.

In summary, 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 to connect the new pipe to the previous patches. For many years, the Commission has recognized that a utility's ability to avoid the incurrence of costs through various actions is something that has a real and definable economic value. In fact, the Commission's Integrated Resource Planning rules specifically incorporate this concept.[6] Missouri statutes also recognizes the vibrancy of the avoided cost concept as evidenced by the Missouri General Assembly's inclusion of the concept as a key component in the statutory provisions governing the Missouri Energy Efficiency Investment Act ("MEEIA") (*See* Section 393.1075.12).[7] The value of the costs avoided by a natural gas utility as a result of its incidental replacement of plastic pipe are just as real as the costs avoided in the MEEIA program, and should likewise be recognized by the Commission in determining that ISRS charges have not increased as a result of the

[5] Buck Rebuttal, Ex. 2, p. 11, lines 12 - 14

[6]For example, 4 CSR 240-20.092(1)(NN) of the Commission's rules set forth the ratepayer impact measure (RIM) test for evaluating the efficacy of various demand side programs. The RIM is defined as "a measure of the difference between the change in total revenues paid to a utility and the change in total cost incurred by the utility as a result of the implementation of demand side programs. The benefits are the *avoided costs* as a result of implementation." (*emphasis supplied).*

[7] The Western District Court of Appeals should also be acquainted with the avoided cost concept as it has had an opportunity to review the application of this concept in a Commission proceeding and even reaffirm the need to update avoided costs with the most recent information when designing demand side incentives. See Missouri Public Service Commission v. Union Electric Company (App. W.D. 2016) WL 7094039.

Company's activity. Mr. Lauber's and Mr. Buck's testimonies clearly demonstrate that the Company has avoided additional costs, not incurred them.

From another perspective, when allocating costs between classes, charges and functions, the Commission has for many years applied cost causation principles to ensure that cost responsibility for a particular utility service is allocated or assigned to who or what is causing a particular cost to be incurred. A good summary of this long-standing principle was provided by the Commission in ***Re: Missouri Gas Energy***, Case No. GR-2004-0209 (235 P.U.R.4th 507), Report and Order dated September 21, 2004, in which the Commission observed:

> An allocation of revenue among the various classes begins with a class cost of service study. Such studies seek to assign cost responsibility based on **cost causation principles** by classifying all cost elements as customer-related, demand-related, or commodity-related. The guiding principle is that the class that causes the cost should be required to pay rates that will allow the utility to recover that cost. (Order, p. 48) (*Emphasis supplied*).

If replacing rather than reusing a plastic facility actually saves rather than costs money, then application of the cost causation principle suggests that none of the resulting ISRS charges were caused by replacing plastic, and therefore no costs should be allocated to such replacement.

For all of these reasons, the Commission should conclude that the only competent and substantial evidence on the record supports a finding that the Company's incidental replacement of plastic piping has not increased the Company's ISRS charges in any meaningful economic sense. Thus, there is no basis for disallowing or adjusting any portion of those costs.

B. OPC neither disputed the Company's testimony that ISRS charges were not increased, nor provided evidence of any method for quantifying an increase, even if one did exist.

Although OPC provided work order information showing that a number of the Company's ISRS projects involved the incidental replacement of plastic facilities, neither OPC nor any other party submitted evidence disputing the testimony by Mr. Lauber and Mr. Buck that such activities did not increase the level of ISRS charges being sought by the Company. Specifically, OPC did not contest in any way Mr. Lauber's depiction of the process, operational constraints or conditions governing the installation of new mains. Nor did OPC challenge in any way Mr. Lauber's assessment that it would been physically impossible or prohibitively expensive, in many instances, to reconnect the new main to existing plastic sections of the old main or to existing plastic service lines, or his ultimate conclusion that reusing such plastic would have resulted in higher ISRS charges.[8] As a result, these assertions regarding the lack of any cost impact from the incidental replacement of plastic pipe are undisputed on the record.

Nor is there any evidence on the record that would quantify, or even provide a method for quantifying, an alternative scenario demonstrating that the ISRS charges at issue were instead increased as a result of the Company's incidental replacement, rather than re-use, of plastic pipe. As previously noted, OPC simply observed in its testimony that as part of the Company's cast iron and bare steel replacement programs some plastic

[8] OPC did not dispute the Company's contention that it sought to undertake these replacement projects in the manner best calculated to enhance the overall safety and integrity of its distribution system while reducing the overall cost of such replacements to their customers. Specifically, OPC did not dispute that that the sole purpose of these replacement programs, and the specific projects undertaken in connection with them during the ISRS period, was to replace aging cast iron or steel pipeline facilities. Indeed, no evidence has been presented that would suggest these projects were undertaken for any other purpose. Nor did OPC dispute that all of the ISRS projects were prudently planned, designed and executed in a way that would best advance public safety while minimizing costs for the ratepayer.

main sections and services were replaced rather than reused. Additional work order information supplied by the Company has provided a further breakdown of the relative percentage of plastic facilities that were replaced as a part of various ISRS projects. OPC did not, however, address what, if any, impact this incidental replacement of plastic pipe actually had on the level of ISRS charges at issue in this proceeding.

In fact, OPC failed to provide any evidence that would be necessary to substantiate such an impact, assuming there was one. One of the most critical missing pieces is the absence of any method for determining how the costs of installing new plastic pipe could be adjusted to account for the fact that a portion of the facilities being replaced was comprised of cast iron or steel, while another portion was plastic. In his direct testimony, OPC witness Hyneman asserted that "[t]here are very simple methods that could be used to separate the eligible ISRS costs from the ineligible ISRS costs." (OPC Ex. 1, p. 10, lines 5-6). Nowhere in his testimony, however, did Mr. Hyneman actually propose such a method, simple or otherwise.

Mr. Hyneman was also unable to articulate such a method throughout the evidentiary hearing held in these cases. As his discussion with Chairman Hall during the evidentiary hearing demonstrated, even when pressed, Mr. Hyneman could never articulate a definitive method that could be reliably and fairly used to calculate an incremental cost. This was especially telling under circumstances such as those prevailing here where, as Chairman Hall noted, the amount of cast iron and steel main replaced, by itself, exceeded the amount of new plastic facilities installed. (Tr. 229, line 24 to Tr. 232, line 19). In fact, Mr. Hyman acknowledged in response to questions from Chairman Hall that merely using percentages of how much plastic versus cast iron was replaced on a particular project to determine what proportion of costs should be

considered ISRS eligible would not necessarily produce reasonable results and that some kind of allocation would need to be used. (Tr. 231, line 22 to Tr. 232, line 19). As previously discussed, however, the use of the cost causation principle that is typically relied upon for allocating costs would result in allocating none of the ISRS charges to the plastic facilities being replaced since that activity is not causing any added costs to be incurred, but is instead saving costs.

Because OPC failed to offer any testimony demonstrating any cost related to the impact from the incidental replacement of plastic pipe or any method for adjusting the costs of newly installed pipe to account for such incidental replacements it was therefore unable to offer any quantification of the dollar value of any such impact. As a result of this failure there is simply no competent and substantial evidence on the record to dispute the Company's contention that its ISRS costs and charges were not increased as a result of its incidental replacement of plastic pipe.[9] Nor is there any evidence on record that would purport to quantify such an impact or even provide a method for arriving at such a quantification.

This deficiency cannot be cured by simple assertions regarding raw work order information that is unaccompanied by any testimony regarding the actual meaning and significance of such information. For example, a sample review of the work order information submitted by the Company shows that plastic made up approximately 9% of the main facilities replaced by Spire East as part of its cast iron and unprotected steel programs and about 5% of the main facilities replaced by Spire West. The Court of

[9] The Company strongly believes that any effort to develop and assert such a method now in briefs or pleadings would constitute a direct and serious violation of the Company's due process rights as well as the Commission's procedural rules for how issues are to be presented and tried. The Company will address this critical issue in its reply brief should that prove necessary upon review of the initial briefs submitted by the other parties.

Appeals' recognized in its Opinion that some level of "nearby" plastic facilities would need to be replaced as part of the Company's cast iron and unprotected steel replacement programs (Opinion, page 6, footnote 5) and that such "truly incidental" replacements would be recoverable as an ISRS eligible costs. By definition, these relatively small portions of plastic main would appear, on their face, to fall within the category of costs deemed eligible for ISRS costs by the Court, but the undisputed testimony of Mr. Lauber and Mr. Buck that replacement of these plastic facilities imposed no incremental increase in the Company's ISRS charges remains the primary source for their inclusion.

The same conclusion must be reached regarding service lines. Although the percentage of service line replacements involving plastic is significantly higher, nearly 40% of the service lines that were replaced were at or close to the end of their estimated useful service lives of between 40 years (Spire West) and 44 years (Spire East). In other words, they were in a worn out or deteriorated condition based on the analysis performed by depreciation professionals over the years regarding how long such facilities can be expected to last. Moreover, a significant amount of the dollars spent for service lines are related to transferring or "hooking up" the service line to the main. For instance, Appendix A to Spire East's Application in Case No. GO-2016-0333 reflects approximately $10 million of investment for the re-use, or transfer, of services compared to approximately $18 million of investment in new service line replacements. Because this is an unavoidable cost that must be incurred regardless of whether the plastic service line is being replaced or reused, there is no justification for excluding it from the Company's ISRS charges. Any remaining plastic services would have been replaced rather than reused only because, as Mr. Lauber testified, the Company saved money and avoided additional costs by doing so.

Finally, it should be noted that these ISRS cases are not the only proceedings where competent and substantial evidence has been presented showing that the incidental replacement of plastic pipe has not resulted in any incremental increase in the Company's ISRS charges, but instead has reduced the magnitude of those charges. Nor are they the only proceedings where such evidence has not been disputed by OPC or any other party. When OPC raised the prospect of making an adjustment to the Company's ISRS charges in the Company recent rate case proceedings, Case Nos GR-2017-0215 and GR-2017-0216, Mr. Lauber submitted rebuttal testimony providing additional evidence, involving an analysis of the costs incurred for actual projects, of how the incidental replacement of plastic pipe actually reduces the level of ISRS charges sought by the Company. (Exhibit 49). Given the Parties' agreement not to introduce new evidence in these ISRS cases, the Company will not address the details of that analysis. It is appropriate to note, however, that this is yet another instance where OPC (and other parties) had an opportunity to present evidence challenging the Company's sworn testimony and analysis in this regard and did not do so.

As previously noted, a Commission Order is reasonable where "the order is supported by competent evidence on the whole record; the decision is not arbitrary or capricious [;] or where the [PSC] has not abused its discretion.'" ***State ex rel. Praxair, Inc. v. Missouri Pub. Serv. Comm'n***, 344 S.W.3d 178, 184 (Mo. banc 2011) (**quoting** ***Envtl. Utils., LLC v. Pub. Serv. Comm'n***, 219 S.W.3d 256, 265 (Mo. App. 2007)). In this instance, an Order rejecting any disallowance or adjustment to the Company's ISRS charges would be the only kind of order that satisfies these fundamental requirements.

III. CONCLUSION

In conclusion, the Company submits that there is no evidentiary basis on the record pertaining to either cost or methodology to support any disallowance or adjustment to the ISRS charges at issue in these proceedings. The Commission should accordingly find that no such disallowance or adjustment is appropriate. This finding comports with the legal guidance provided by the Western District Court of Appeals in its Opinion, while ensuring that the Company's critical safety program is carried out in way that produces the best possible results for customers and the general public.

Respectfully submitted,

SPIRE MISSOURI INC.

By: **/s/ Michael C. Pendergast**
Michael C. Pendergast, #31763
Of Counsel, Fischer & Dority, P.C.
Telephone: (314) 288-8723
Email: mcp2015law@icloud.com

/s/ Rick Zucker
Rick Zucker, #49211
Zucker Law LLC
Telephone: (314) 575-5557
E-mail: zuckerlaw21@gmail.com

423 (R) South Main Street
St. Charles, MO 63301

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the Staff and the Office of the Public Counsel, on this 29th day of June 2018 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

/s/ Marcia Spangler