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**
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**
In the Matter of the Application of Spire Missouri Inc. to Change its Infrastructure System Replacement Surcharge in its Spire Missouri East Service Territory	))))	**File No. GO-2018-0309**
In the Matter of the Application of Spire Missouri Inc. to Change its Infrastructure System Replacement Surcharge in its Spire Missouri West Service Territory	))))	**File No. GO-2018-0310**

BRIEF OF THE
OFFICE OF THE PUBLIC COUNSEL

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COMES NOW the Office of the Public Counsel ("OPC"), by and through undersigned counsel, and for its *Brief*, states as follows:

I. Procedural History:

On September 30, 2016, Spire Missouri Inc. ("Spire") filed two verified applications requesting changes to the infrastructure system replacement surcharge ("ISRS") currently in place in the service territories then being managed by its two subsidiaries: Laclede Gas Company (n/k/a Spire East) and Missouri Gas Energy (n/k/a Spire West). As part of this requested ISRS, Spire sought recovery for replacement of plastic mains and service lines that were not worn out or deteriorated, yet were still being replaced due to Spire's policy of replacing entire neighborhood systems at one time. The Commission issued a Report and Order in both cases on January 18, 2017, in which it concluded that the plastic pipe being replaced "was an integral component of the worn out and deteriorated cast iron and steel pipe" and thus could be recovered through an ISRS. *Commission Report and Order*, GO-2016-0332 & GO-2016-0333, pg. 20. The OPC timely appealed the Commission's decision to the Western District Court of Appeals. *See PSC v. Office of Public Counsel (In re Laclede Gas Co.)*, 539 S.W.3d 835, 841 (Mo. App. W.D. 2017).

In February of 2017, while the 2016 cases were still pending on appeal, Spire filed a second set of requests for ISRS adjustments in its Laclede Gas Company and Missouri Gas Energy territories. Because the Court of Appeals had not yet reached a decision on the first set of cases, the parties entered into a unanimous stipulation and agreement wherein they agreed that if the Court reversed the Commission's decision in the 2016 cases that decision would be applied to the 2017 cases as well. *Unanimous Stipulation and Agreement*, GO-2017-0201 & GO-2017-0202, pg. 2-4. This unanimous stipulation and agreement was approved by Commission order issued on April 26, 2017. *Order Approving Unanimous Stipulation and Agreement*, GO-2017-0201 & GO-2017-0202, pg. 2.

The Western District issued its opinion in the 2016 cases on November 21, 2017. *In re Laclede Gas Co.*, 539 S.W.3d 835. The Court found that the Commission had erred in allowing Spire to recover the cost of replacing plastic components that were not worn out or in a deteriorated condition. *Id.* at 841. The Court subsequently reversed the Commission's Report and Order and remanded the case for further proceedings. *Id.* The Court's mandate issued on March 7, 2018.

Upon receipt of the Court of Appeal's remand, the Commission requested briefing from all the parties regarding how to proceed.[1] This led to oral arguments that were held on September 9, 2018. As a result of these oral arguments, the Commission determined that additional evidence was necessary for it to render a proper decision and it ordered an evidentiary hearing that was held on August 27, 2018.

II. Matters on which briefing was requested at the evidentiary hearing:

During the August 27, 2018, evidentiary hearing, the Commission requested briefing with regard to two specific issues. The OPC's responds to the Commission's requests as follows.

A. The Commission's statutory authority to issue a refund in the form of temporary rate adjustments under Missouri Revised Statutes section 386.520:

Missouri Revised Statutes ("RSMo.") section 386.520 sets forth procedural mechanisms that are activated once a judicial decision determines the Commission erred when deciding an issue in a manner that affects rates. Specifically, the statute requires the reviewing court to instruct the Commission to provide temporary rate adjustments to cover the cost of any over-collection or under-collection that may have occurred due to the

[1] For reasons unknown to the OPC, the Commission declined the OPC's request to deal with the issue as part of Spire's then ongoing general rate cases (GR-2017-0215 and GR-2017-0216).

Commission's error. The cases now before the commission on remand from the Western District Court of Appeals clearly fall within the purview of section 386.520.2 sub-sections (1) and (2). The Western District's opinion found that the Commission erred in allowing Spire to include the replacement of plastic components that were not worn out or in a deteriorated condition in the rate structure of its ISRS. *In re Laclede Gas Co.*, 539 S.W.3d at 841. The Court reversed the Commission's decision "as it related to the inclusion of the replacement cost of the plastic components in the ISRS rate schedules" and remanded the case "for further proceedings consistent with this opinion." *Id.* This conclusion clearly meets the criteria for application of section 386.520.2(1), which applies when "a final and unappealable judicial decision determines that a commission order or decision unlawfully or unreasonably decided an issue or issues in a manner affecting rates[.]"[2] In addition, because Spire was collecting money in excess of what was actually authorized under the ISRS statutes, their rates and charges were plainly "in excess of what the public utility would have received had the [C]ommission not erred[,]" thus placing them squarely within the refund framework of section 386.520.2(2). As such, section 386.520.2 not only grants the Commission the authority to issue a refund to Spire's customers in the form of temporary rate adjustments, it also mandates the Commission do so.[3]

[2] The decision of the Western District became final and unappealable following the Missouri Supreme Court's denial of transfer issued on March 6, 2018. *Laclede Gas Co. v. Office of Pub. Counsel*, No. SC96868, 2018 Mo. LEXIS 85, at *1 (Mar. 6, 2018). Further, the Western District's decision clearly affects rates as it explicitly ordered the reversal of the approved rate schedules as they applied to the inclusion of plastic components.

[3] The statue further requires that theses temporary rate adjustments be put into effect no later than 120 days from the issuance of the remand. Given that the mandate of the court was received and filed in EFIS on March 7, 2018, the commission should have issued its refunds in early July of this year. As the case currently stands, however, the statutorily mandated refunds will not be forthcoming until well into September at the earliest.

While the OPC would prefer not to engage in hypothetical arguments, it believes that the nature of this briefing request makes doing so necessary. To that end, the OPC will address an argument that it presumes Spire is likely to make, which the OPC will characterize as follows: because the Court did not include an express reference to section 386.520 in its opinion, this section does not apply to this case. Such an argument is completely wrong. The Appellate Court's generally stated remand of the case was for "further proceedings ***consistent with this opinion***." *PSC v. Office of Pub. Counsel (In re Laclede Gas Co.)*, 539 S.W.3d 835, 841 (Mo. App. W.D. 2017) (emphasis added). This instruction clearly implies that the Commission was to comply with the statutory requirements of section 386.520, which were triggered by the issuance of the opinion itself. The strongest evidence of this fact is the plain language of the statute, which states the court "***shall*** instruct the commission to provide temporary rate adjustments." (emphasis added). As the Supreme Court has previously stated, "'[s]hall' means 'shall[,]'" and the term "unambiguously indicates a command or mandate." *Frye v. Levy*, 440 S.W.3d 405, 408 (Mo. Banc 2014). "To suggest any other meaning is to ignore the plain language of the statute." *Id.* It must logically be concluded, therefore, that the Western District's opinion complied with requirements of section 386.520 by implicitly instructing the Commission to provide the mandated temporary rate adjustments "consistent with th[e] opinion."

Should Spire decide to argue that section 386.520 was not applicable in this case because it was not mentioned in the Court's opinion, then Spire would necessarily be asserting that the Western District Court of Appeals failed to follow applicable law. Further, because the appellate brief filed by the OPC in WD80544 specifically referenced section 386.520, the statute's application was clearly before the Court when it handed down its opinion. *See* Exhibit A, pgs. 36-37. Therefore, if Spire were to claim that Court did ***not*** intend

to implicitly incorporate the mandated instruction of section 386.520 in its opinion, then Spire would be ineludibly insinuating that the court not only failed to follow the law, but actually ***ignored*** the mandatory provisions of section 386.520 and thus ***willfully and purposefully*** violated the law.

The OPC has nothing but respect for the Western District Court of Appeals, and knows the dedication and integrity of those who serve on that bench. As such, the OPC hopes that Spire will not stoop so low as to contend that the Appellate Court's use of broad remand language was proof that the Western District was abdicating its legal duties.

In addition to being the only logical conclusion if one assumes that the Court of Appeals followed the law, the OPC's position that the language of the Western District's opinion mandated the application of section 386.520 is consistent with prior Commission decisions. This can easily be seen in the case of *AG Processing, Inc. v. KCP&L Greater Mo. Operations Co.*, 432 S.W.3d 226 (Mo. App. W.D. 2014). The *AG Processing* case arose from a complaint filed by an industrial steam customer against Kansas City Power and Light ("KCP&L") that alleged imprudent management of the utility's fuel hedging program. *Id.* at 227. The Commission initially agreed with the steam customer and ordered a refund of the net cost of operating the hedging program. *Id.* However, on appeal, the Western District found that the Commission had "erred by shifting the burden of proof to KCP&L and by ordering KCP&L to pay customer refunds because it failed to meet that burden." *Id.* at 228. The court accordingly "reversed the Commission's September 28, 2011 report and order and remanded the cause 'for further consideration under the appropriate burden of proof.'"[4] *Id.*

[4] The quoted language is actually the last line of the analysis section. The conclusion reads as follows: "The Commission's Report and Order is reversed, and the cause is remanded for further consideration consistent with this opinion." *Ag Processing Inc. v. KCP&L Greater Mo. Operations Co.*, 385 S.W.3d 511, 516 (Mo. App. W.D. 2012). This language is almost identical to that used by the same court in the present case.

Yet, despite the opinion using this broad remand language, the Commission nevertheless "found that it needed to make a temporary rate adjustment under Section 386.520.2(3)." *Id.* Specifically,

> [t]he Commission relied upon Section 386.520.2(3)'s provision that, if an unlawful or unreasonable decision of the Commission results in a decrease in the public utility's rates and charges in a greater amount than what would have occurred had the Commission not erred, the Commission shall be instructed on remand to approve temporary rate adjustments designed to allow the utility to recover from its customers the amounts it should have collected plus interest.

Id. at 228-29. This case thus demonstrates that the Commission has previously issued temporary rate adjustments under section 386.520 based on a remand from the Court of Appeals that exclusively used broad "consistent with this opinion" language. The suggestion that the Commission is incapable of doing so in this case is therefore pure nonsense.

Another critical error with any potential argument that the Commission cannot act because the Court failed to cite 386.520 is that it ignores the broad power of the Commission to set just and reasonable rates, which obviously would include the temporary rate adjustments contemplated by section 386.520. In fact, were the Commission to agree with such an argument, it would essentially render itself powerless to act following a remand unless specifically told what to do by the reviewing court. Obviously, the OPC does not agree with such an interpretation of the statute. Instead, the OPC would point to RSMo. section 386.040, which vests the Commission with "all powers necessary or proper to enable it to carry out fully and effectually all the purposes of this chapter." Given that section 386.520 falls within the same chapter as 386.040, the Commission is clearly vested with the power to implement the temporary rate adjustments found therein and thus carry out the purpose of section 386.520 by refunding to Spire's customers the money that Spire inappropriately over-collected.

Ultimately, the Commission is left with only two possible interpretations when considering the implications of section 386.520 on the present case. First, the Commission could follow the OPC's suggestion by observing its own prior precedent, determining the Western District followed the law via implicitly instructing the Commission to obey section 386.520 by issuing refunds in the form of temporary rate adjustments, and embrace its own power to effectuate those refunds. Second, the Commission could do as Spire might suggest and ignore its own prior precedent, conclude the Western District violated the law by not explicitly instructing the Commission in the manner required by section 386.520, and thus find itself impotent to provide the requested relief. Considering these two choices, there can be no doubt that only the first option is correct. Therefore, the Commission should conclude that it has not only the authority but also a duty to act pursuant to section 386.520 and order temporary rate adjustments designed to flow thorough to Spire's customer's the excess amounts (plus interest) that Spire collected on account of its invalid ISRS.

B. **Effect of Mo. Pub. Serv. Comm'n v. Office of the Pub. Counsel (In re Mo.-Am. Water Co.), 516 S.W.3d 823 (Mo. Banc 2017), on the present cases:**

The Commission requested briefing on the effect of the Missouri Supreme Court's opinion in *Mo. Pub. Serv. Comm'n v. Office of the Pub. Counsel (In re Mo.-Am. Water Co.)*, 516 S.W.3d 823 (Mo. 2017), ("the MAWC case") on the present cases. The short answer to this question is that the MAWC case has no effect on the present cases.

The MAWC case concerned a challenge to the validity of a Missouri American Water Company ("MAWC") ISRS approved by the Commission . *Id.* at 826. While the case was still pending on appeal, MAWC filed a separate general rate case that ultimately led to the then existing ISRS infrastructure being incorporated into the MAWC's base rates. *Id.* at 826-27. "Accordingly, the surcharges that were the subject of the underlying interim rate case were no longer in effect by the time the appellate court issued its opinion." *Id.* at 827. This led the

Supreme Court to find that the OPC's challenge of the underling tariffs was moot because "[t]ariffs that are superseded by subsequently filed tariffs are generally moot and are not considered on appeal because superseded tariffs cannot be corrected retroactively." *Id.* at 828. (*citing State ex. rel. Praxair, Inc. v. Pub. Serv. Comm'n, 328 S.W.3d 329, 334 (Mo. App. 2010)).*

The Spire cases currently before the Commission are completely different from the situation before the Supreme Court in the MAWC case. Specifically, The OPC is ***not*** challenging the validity of the 2016 and 2017 tariffs because those tariffs have already been found invalid by the Western District.[5] Instead, the only question now before the Commission is how to calculate the amount that Spire over-collected through its ISRS as a result of these invalid tariffs. Answering this question is necessary so as to allow that money to be refunded to Spire's customers. As such, this question is clearly not moot.

To better understand this point, it may be best to begin with the definition of moot. The Western District's *Praxair* decision lays out the definition of moot as follows: "[a] case is moot when the question presented for decision seeks a judgment upon some matter which, if the judgment was rendered, would not have any practical effect upon any then existing controversy." *State ex rel. Praxair, Inc. v. PSC*, 328 S.W.3d 329, 334 (Mo. App. W.D. 2010) (*quoting Mo. Pub. Serv. Comm'n v. Mo. Interstate Gas, LLC*, 266 S.W.3d 881, 885 (Mo. App. W.D. 2008)). In the MAWC case, the question presented for decision was whether the ISRS tariff approved by the Commission was valid and the judgment sought by the OPC was a determination that it was invalid. The Supreme Court decided the case was moot because the ISRS tariff had already been superseded by the general rate case tariffs meaning that, even if the Court agreed with OPC, changing the old ISRS tariff would have no effect. In the

[5] Moreover, the Western District found these tariffs invalid ***before*** the Commission approved new rates for Spire in GR-2017-0215 and GR-2017-0216.

present cases, by contrast, the Western District has already determined the invalidity of Spire's ISRS tariffs and the question now presented for decision is how much money Spire should refund to its customers as a result of over-collections caused by these invalid tariffs. Any judgment entered on this issue will obviously have a ***very*** practical effect on this question as it may result in Spire repaying more than $5,000,000.00 back to its customers. To suggest, therefore, that the question is moot because the Commission's decision can have no practical effect is obviously wrong.

Further support for the OPC's position can be found in the language of section 386.520.[6] The statute specifically states that any excess collections made by a utility as the result of an erroneous ruling by the Commission will be "calculated for the period commencing with the date the rate increase or decrease took effect until the earlier of the date when new rates and charges consistent with the court's opinion became effective ***or when new rates or charges otherwise approved by the [C]ommission as a result of a general rate case filing or complaint became effective***." This language means that the statute explicitly anticipates a situation where, as is the case here, a period of over-collection by a utility ended because of an intervening rate case, yet it still requires a refund of the over-collected money. Consequently, a Commission order that determined the issue of Spire's over-collection was moot as a result of its recent rate case would render this portion of the statute meaningless, which would be a clear violation of the canons of statutory interpretation. *See Dev. Corp. v. Urgent Care Assocs.*, 429 S.W.3d 487, 496 (Mo. App. W.D.

[6] The Supreme Court did not address section 386.520 in the MAWC case because that case only concerned the validity of the approved ISRS in question and was not considering a remand to determine the amount of over-collection made by the company as a result of an invalid ISRS.

2014) (courts "must presume that the legislature does not enact meaningless provisions or intend absurd results.").

As previously stated, the OPC would prefer not to attempt to rebut hypothetical arguments it presumes opposing parties will make. However, the OPC also believes that the Commission's requested briefing will encourage Spire to argue the calculation of money it over-collected through its ISRS is moot due to Supreme Court's decision in the MAWC case. Naturally, the OPC would reject such arguments for the reasons already stated. Moreover, the OPC would consider such arguments indicative of Spire's ever-present unwillingness to adhere to the Western District's decision. For example, Spire has stated multiple times on the record its dissatisfaction with the Western District's opinion, and it has even gone as far as to suggest that the Commission reissue its previous order fundamentally unchanged. Further, Spire vigorously fought the OPC's attempts to have the remand issue addressed during its last general rate case, thereby purposefully laying the groundwork for any future specious "mootness" argument it might make. On top of this, Spire's newly filed ISRS applications make no effort to comply with the Western District's opinion and instead continues to request recovery for the exact same type of plastic components that the Court of Appeals held were ISRS ineligible. Given the disdain Spire has clearly shown the Western District's decision (as well as its purposeful attempts to ensure that the decision was not considered during the subsequent rate case), it is certain that any unbiased observer will see whatever potential argument Spire might make regarding "mootness" for what it really is: an unabashed attempt to circumvent, and by extension nullify, the Western District's decision. Moreover, were the Commission to accept such an argument, it would effectively be permitting Spire to evade justice and retain ill-gotten funds through the filing of a general rate case. The Commission should consequently reject any such argument.

There can be absolutely no question that, during the time period between when the 2016 ISRS and the 2017 ISRS went into effect and when the new rate case occurred, Spire collected money from its customers that, absent the ISRS, Spire would not have been able to collect.[7] However, the Western District found that the ISRS rates approved by the Commission included amounts that were ineligible for collection through an ISRS and remanded the case. Despite this, Spire has yet to return any portion of the money that it collected through its ISRS. From these facts, we can discern three simple truths: (1) Spire over-collected money from its customers through its ISRS; (2) the money that Spire over-collected is still in its possession; and (3) Spire has no right to retain this money. The only question currently before the Commission is what should be done with this money that Spire over-collected. Unlike in the MAWC case, the answer to this question ***will*** have an immediate and obvious practical effect and hence is not moot. As such, the MAWC case has no effect on the current cases.

III. Matters concerning the remand of the 2016 and 2017 cases:

[7] In particular, Spire collected money equal to the original cost of the newly added plant (less accumulated depreciation and deferred income taxes) multiplied by Spire's average weighted cost of capital plus money related to depreciation expenses, income taxes, and property taxes. *See* RSMo. § 393.1009(1), (7). Had Spire not received an ISRS, this money would not have been recoverable. Instead, Spire would have had to wait until it filed its next rate case to collect any money on the newly installed plant and, even then, would only be able to collect depreciation expenses, taxes, and return on the plant that accumulated moving ***forward*** in time. Moreover, the amount Spire could collect going forward could only be determined ***after*** it accounted for any depreciation that occurred prior to the rate case. This means that, absent an ISRS, Spire would ***never*** have been able to collect the money that it collected prior to its next general rate case and hence the fact that Spire's ISRS reset to zero during the next general rate case had absolutely no effect on the amount of money Spire over-collected.

The OPC presents the following discussion of issues relating to cases GO-2016-0332 and GO-2016-0333 and cases GO-2017-0201 and GO-2017-0202, which the OPC will refer to as the 2016 cases and the 2017 cases respectively.[8]

A. Potential Refunds:

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

Section 393.1005.2 provides the procedural mechanism for Commission approval of a utility's application for an ISRS. In particular, subsection (4) states:

> If the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, the commission ***shall*** enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1009 to 393.1015.

(emphasis added). This subsection does not, however, state what the Commission should do if the utility's petition does ***not*** comply with the requirements of sections 393.1009 to 393.1015. Nor can this information be found anywhere else in sections 393.1009 to 393.1015. Therefore, the only logical conclusion is that if the utility's petition ***does not*** comply with the requirements of sections 393.1009 to 393.1015, the commission shall ***not*** enter an order authorizing the utility to impose an ISRS. In addition, the statute also states that "[n]o other revenue requirement or ratemaking issues may be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of sections 393.1009 to 393.1015." When read together, these two statutory commandments make clear that if a utility's ISRS application fails to follow the statutory requirements, it cannot be saved by Commission modifications and must instead be dismissed.

[8] For the sake of clarity and readability, The OPC will begin this section by addressing the second issue in the List of Issues filed by Staff before returning to the first issue.

In this case, the Western District has already determined that Spire's application in the 2016 and 2017 cases did not comply with the requirements of sections 393.1009 to 393.1015 due to the fact that Spire inappropriately included ineligible plastic components that were not worn out or in a deteriorated condition. Therefore, the Commission should not have issued an order approving Spire's request for an ISRS. As a result, all of the money that Spire did collect under its ISRS should be considered an over-collection, and pursuant to section 386.520 Spire should be required to refund ***all*** of the money that it collected with interest.

B. **Potential Costs and Methodology:**[9]

i. **What costs, if any, were recovered through Spire Missouri East's and West's 2016 and 2017 ISRS for the replacement of ineligible plastic components not in a worn out or in a deteriorated condition?**
ii. **What is the appropriate methodology for making this determination?**
iii. **Factually, what is the amount of plastic components not in a worn out or in a deteriorated condition replaced for each ISRS period?**

Notwithstanding the argument presented above, the OPC acknowledges that the Commission requested evidence relating to the amount of money that Spire over-collected from its customers for ***just*** the plastic components that the Western District found were ineligible for recovery through an ISRS. As such, the OPC has presented evidence through the direct testimony of its expert witness, Mr. John Robinett, as to how that specific over-collection may be calculated and what that amount would be. *See* exhibit 201. The methodology employed for these calculations is incredibly simple and consists of basically just two steps. First, the amount Spire collected (or better stated, was authorized to collect) in relation to the replacement or retirement of its old system must be determined. Exhibit

[9] The OPC acknowledges that these issues were listed separately in the List of Issues filed by staff. However, upon review the OPC believes that these issues are so intertwined that to discuss them separately would introduce unnecessary redundancies and confusion. Therefore, the OPC will address these issues together.

201, pg. 3. Fortunately, this is easy to calculate, as it is the same amount Spire collected to cover the cost of building the new system – which replaced the old system – and thus is essentially just the amount Spire recovered through its ISRS. *Id.*; Transcript Vol. 3 pg. 408 lines 4-16. Once the amount Spire collected to replace or retire the old system has been determined, the second step is to allocate that amount among the various types of pipe being replaced or retired. Exhibit 201, pg. 3. This is done by simply multiplying the amount Spire collected for retiring the old system against the percentage by which each type of pipe made up the old system. *Id.* In the case of plastic pipes therefore, the calculation is just the amount Spire collected to cover replacement of the old system multiplied by the percentage of plastic pipes in the old system. *Id.*

The methodology described above was employed by both the OPC and the Commission Staff ("Staff") to calculate the amount of money Spire over-collected through its non-compliant ISRS. The OPC determined that Spire over-collected, and hence needed to return, a total of $5,025,022,[10] while Staff's calculations found the number should be either $4,161,025[11] or $5,721,330.[12] Exhibit 201, pg. 5; Exhibit 101, schedule KKB-d8. The difference between the OPC's number and Staff's numbers is purely the result of a different method for determining the percentage of plastic pipe in Spire's old system. Specifically, Staff developed their number for the percentage of plastic in the old system by examining the retirements listed in the work orders supplied by the company. Exhibit 101, pg. 4. Unfortunately, the

[10] This represents $1,930,298 for Spire East (formerly Laclede) and $3,094,724 for Spire West (formerly Missouri Gas Energy).

[11] Representing $2,801,860 for Spire East (formerly Laclede) and $1,359,950 for Spire West (formerly Missouri Gas Energy).

[12] Representing $4,168,260 for Spire East (formerly Laclede) and $1,553,070 for Spire West (formerly Missouri Gas Energy). Staff produced two different numbers based on different treatment of the work orders that Spire failed to provide. *See* Exhibit 101, pg. 4.

OPC was unable to replicate Staff's work owing to its limited resources and instead used the percentages cited in the Western District's opinion. Exhibit 201, pg. 3. While the OPC stands by the work of its expert (and notes the similarity of its answer to those determined using Staff's more involved method), the OPC also acknowledges that Staff's numbers most likely represent a slightly more accurate determination of the amount Spire over-collected from its customers. Therefore, the OPC does not believe that it would be incorrect for the Commission to adopt either of the Staff's values as the amount Spire over-collected through its non-compliant ISRS.

In contrast to the calculations performed and presented by Staff and the OPC, Spire offers no calculation of how much it over-collected from its customers on account of its invalid, non-compliant ISRS. Instead, Spire clings to the same erroneous argument that it previously made to the Court of Appeals by claiming that there was ***no*** over-collection because its approach to replacing cast-iron and steel pipes was economically prudent.[13] *See, e.g.*, Exhibit 5, pg. 3. In other words, Spire claims that because it would have cost more to replace just the steel and cast-iron and not the interspersed plastic patches, the Commission should just overlook the fact that it was requesting recovery for ISRS ineligible replacements. *Id.* The point that Spire misses, however, is that this argument was already rejected by the Court of Appeals. *PSC v. Office of Pub. Counsel (In re Laclede Gas Co.)*, 539 S.W.3d 835, 840 (Mo. App. W.D. 2017) ("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

[13] Spire uses several different terms in making this point, for example "cost avoidance" and "economic efficiency," but in the end, their arguments all relate to the general concept of prudency.

statute for 'convenience, expediency[,] or necessity' to conclude that the costs are eligible for recovery through the ISRS process." (quoting *Verified Application & in re Laclede Gas Co. v. Office of Pub. Counsel*, 504 S.W.3d 852, 859 (Mo. App. W.D. 2016))). This means that Spire's arguments regarding prudency, cost avoidance, and economic efficiency are irrelevant to the Commission's inquiry. Spire's approach was ineligible under the ISRS statutes and therefore it cannot recover through an ISRS no matter how prudent its approach may have been.[14] Spire's continuing failure to accept this simple fact has left the record bare of any method by which to comply with the Western District's opinion and calculate the amount it over-collected for ineligible plastic components save for those presented by Staff and the OPC. Consequently, the Commission should adopt the method presented by Staff and the OPC for calculating this amount.

Spire also raises several other arguments with the aim of chipping away at the amount calculated by Staff and the OPC, none of which are correct. For example, Spire claims that Staff incorrectly excluded from recovery the costs associated with relocations, which it argues are recoverable through an ISRS regardless of whether the components are worn out or deteriorated. Exhibit 6, pg. 5. However, Staff's expert witness Kimberly Bolin testified that no relocations were considered during the calculation of Spire's over-collection. Exhibit 101, pg. 4 ("Staff did not remove any amounts for work orders that were associated with relocations required by a governmental authority, encapsulation work orders, and meter and

[14] Part of the larger problem in this case lies with Spire's apparent belief that an ISRS is some form of God-given right that exists to reward them for doing something they are otherwise required to do. The reality of the situation is that Spire is required to adhere to the Commission's rules regarding steel and cast-iron pipes, do so in a manner that provides safe and adequate service, and do so prudently all regardless of whether it receives an ISRS. Eligibility for an ISRS is not a right, but rather, it is matter of legislative grace that applies only in narrowly defined circumstances. Spire's neighborhood wide replacement program simply does not meet these circumstances.

regulator replacement work orders."); Transcript Vol. 3, pg. 444 line 25 – pg. 445 line 1 ("Q: Did Staff exclude any mandated relocations? A: No, we did not."). Spire's position on this point is therefore simply wrong.

The contradiction between Spire's witness and Ms. Bolin would appear to arise because Spire's witness misinterpreted schedule KKB-d2, which was attached to Ms. Bolin's testimony. This schedule ***does*** contain the two workorders (900147 and 902101) on which Spire relies to show Staff improperly removed relocations. Exhibit 100, schedule KKB-d2, pg. 4. However, this schedule ***does not*** show those workorders were included in Staff's calculation of the refund Spire owes due to its inclusion of ineligible plastic replacements. Instead, this schedule shows how Staff calculated the average percentage of plastic components being removed in each workorder, which Staff needed in order to estimate the amount Spire over-collected in the workorders it did not supply. Exhibit 100, pgs. 3-4. This is true for both the general relocation workorder (900147) as well as the "angle of repose" workorder (902101), which Spire also claims is a relocation. *Id.* Transcript Vol. 3, pg. 445 lines 2-10. With regard to this second workorder, the OPC raises additional concerns regarding Spire's argument because the workorder itself, which was prepared entirely by Spire, claims that that the pipes were being ***replaced*** to deal with "angle of repose" issues; not relocated. Exhibit 202, pgs. 1-2; Transcript Vol. 3, pg. 427 line 24 – pg. 428 line 17. In fact, the workorder even says that the basis for ISRS recovery was ***replacement*** not relocation. Exhibit 202, pg. 2; Transcript Vol. 3, pg. 428 lines 10 – 17. For Spire to now claim, apropos of nothing, that this "angle of repose" workorder is a relocation when the workorder itself says otherwise is inherently contradictory.

Another argument that Spire makes is that Staff inappropriately disallowed the amounts Spire collected to cover transfers or reconnections of service. Exhibit 6, pg. 7. The testimony that Spire offers on this point claims that these transfers or reconnections were

the direct result of Spire's decision to redesign its system from a low-pressure system that runs down both sides of a street to an intermediate-pressure system running down only one side. *Id.* The witness providing the testimony goes on to quote only the first half of footnote five from the Western District's opinion, which states that there may be ISRS eligibility for work that is "truly incidental" to the replacement of worn out or deteriorated components. *Id.* The Witness concludes that these transfers or reconnections of service undertaken by Spire in the course of redesigning its system were "truly incidental" and thus should be ISRS eligible. *Id.* Unfortunately for Spire, the fallacy of its argument is laid bare simply by reading the rest of footnote five, which states:

> However, we do not believe that section 393.1009(5)(a) allows ISRS eligibility to be bootstrapped to components that are not worn out or deteriorated simply because that are interspersed within the same neighborhood system of such components being replaced ***or because a gas utility is using the need to replace worn out or deteriorated components as an opportunity to redesign a system (i.e., by changing the depth of the components or system pressure) which necessitates the replacement of additional components***.

PSC v. Office of Pub. Counsel (In re Laclede Gas Co.), 539 S.W.3d 835, 839 n 5 (Mo. App. W.D. 2017) (emphasis added). Clearly the Western District heard Spire's supposed "transfers or reconnections of service" argument the first time around and did not buy it. The Commission should similarly dismiss Spire's claim on remand.

A third argument Spire makes is that Staff should not have excluded costs found in blanket work orders. These blanket work orders can be included in several different ISRS filings or involve projects related to several ISRS filings. Transcript Vol. 3 pg. 308 lines 1-4. They provide no details as to why the pipes included in them are being retired and have no specific end date. Transcript Vol. 3 pg. 446 lines 10-18. Finally, Spire failed to provide all of the relevant work orders that Staff requested. Transcript Vol. 3 pg. 446 line 22 – pg. 446 line 5. Given these facts, there is no basis by which Spire can prove the plastic pipes that were

being retired in these workorders were in a worn out or deteriorated condition. Therefore, the Commission should dismiss Spire's argument regarding them.

Finally, Spire also tries to assert that Staff inappropriately calculated the refund Spire owes because it included money Spire collected for the replacement of plastic components that were past the average service life. Exhibit 6, pg 8. Spire argues that the Commission should consider the fact that these components were past their average service life as proof that they were worn out or deteriorated and thus ISRS eligible. *Id.* at pg. 3. For Spire to even make this argument is somewhat strange given that the Western District has already found that "[n]o party contests that the plastic mains and service lines were ***not*** in a worn out or deteriorated condition[.]" *PSC v. Office of Pub. Counsel (In re Laclede Gas Co.)*, 539 S.W.3d 835, 839 (Mo. App. 2017) (emphasis added). Moreover, the record clearly rebuts Spire's argument that a component's average service life is a good determining factor for when something is worn out or deteriorated. To begin with, the OPC presented the testimony of its expert witness Mr. Robinett (whom Spire's own witness qualified as ***the*** person to talk to regarding depreciation and average service life). Transcript Vol. 3, pg. 538 line 25 – pg. 539 line 3. Mr. Robinett explained that average service life alone is insufficient to determine if pipes or worn out or deteriorated. Transcript Vol. 3, pg. 539 line 4 – pg. 540 line 23. Mr. Robinett's testimony was further supported by several learned treatises on the subject of depreciation, all of which were entered into the record.[15] *See* Exhibits 203, 204, and 205. These treatises stated, among other things, that "wear and tear" are "often a ***minor*** reason for the retirement of property" and that "average service life is just that, an average" meaning that it:

> is the average service life of a group of units that may number anywhere from a hundred or so in one group to several million units in another group. Similar

[15] Spire, by contrast, offered absolutely no support for its argument.

> equipment in such groups does not always last the same length of time. One unit may fail in service after only six months of use, while another apparently identical unit may last for fifty years.

Exhibit 204, pg. 71; Exhibit 205, pg 59. As these treatises make clear, the idea that it is possible to determine whether any one segment of pipe is worn out or deteriorated due to it being past its average service life is plainly erroneous.

Even if the Commission were to ignore the OPC's evidence, Spire still cannot account for the most damning proof of the inaccuracy of its claim that averages service life can be used to prove certain segments of plastic pipe were worn out or deteriorated. This is because that proof comes from the testimony of Spire's own witness who stated that these types of plastic components "should last ***indefinitely***." Transcript Vol. 3, pg. 375, lines 5-6. Assuming Spire was telling the truth about the longevity of its plastic pipes, it is hard to understand how Spire can simultaneously claim those pipes were worn out or deteriorated simply because they had spent forty or more years in the ground. Indeed, the testimony of Spire's witness demonstrably refutes the notion that average service life is an appropriate indicator of worn out or deteriorated condition when one considers the fact that the average service life for Spire's plastic service lines are the ***same*** as for its steel service lines and the average service life of its plastic mains is somehow ***less*** than its steel and cast-iron ones. If Spire's assertions that (1) the average service life can be used as a suitable determination of when components are worn out and deteriorated, and (2) the plastic pipes Spire is installing truly last longer than the steel or cast-iron ones they are replacing are both correct, then the plastic pipes should clearly have a longer average service life than their steel and cast-iron counterparts. The fact that the plastic pipes do not have a longer average service life than their steel or cast-iron counterparts proves that the average service life is not a sufficient indicator that these pipes are worn out or deteriorated. The Commission should consequently

reject Spire's inane suggestion that some of the plastic pipes are worn out simply due to their age.

Based on the forgoing arguments, the OPC requests that, should the Commission determine it is proper to refund only the money that Spire over-collected with regard to ineligible plastic components, the Commission adopt any one of the three calculations of that amount that has been provided by either Staff or the OPC and that the Commission disregard any claimed adjustments to those amounts that Spire seeks.

C. Rate Design:

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

As it has previously indicated (numerous times), the OPC believes that the only proper method for refunding the money that Spire over-collected from its customers as the result of its invalid ISRS is the statutory mechanism found in section 386.520.2(2). This subsection clearly states that in the event of a commission error resulting in over-collection, the Commission will establish "temporary rate adjustments designed to flow through to the public utility's then-existing customers the excess amounts that were collected by the utility plus interest at the higher of the prime bank lending rate minus two percentage points or zero." Therefore, the Commission should issue an order establishing temporary rate adjustments to Spire's current existing rates that will flow through all the money Spire over-collected plus three percent interest[16] over a period of time equal in length to when the ISRS were in effect.

[16] The OPC notes that the current prime rate for bank loans is 5%. *See* Daily Federal Reserve Selected Interest Rates - H.15, found online at https://www.federalreserve.gov/releases/h15/. This means that Spire owes 3% interest on the amount it over-collected from its customers, this being the higher of the prime bank lending rate minus two percentage points or zero.

Staff has recommended that the money that Spire over-collected through its 2016 ISRS and 2017 ISRS be returned to its customers through a simple adjustment to Spire's currently pending 2018 ISRS. Exhibit 105, pg. 3. This proposed mechanism of refund is inappropriate for several reasons. First, Staff's proposal fails to take into account the interest owed by Spire pursuant to RSMo. section 386.520.2(2). Second, section 386.520 requires that the money a utility over-collects be paid back "over a like period of time" compared to when the over-collection occurred. In this case, the over-collection on the 2016 ISRS and the 2017 ISRS occurred for fifteen months and elven months respectively. Exhibit 201, pg. 4. However, Staff's recommendation has no end date for the adjustment. As a result, Spire may be paying back the money it over-collected for several years longer than the time period the over-collection occurred, and Spire might actually under-collect as a result.

Finally, Staff's proposal may well drive the amount Spire is entitled to collect below the $1,000,000 threshold required for the Commission to grant an ISRS. For example, Staff's recommendation in the 2018 case for Spire East calls for an annual pre-tax revenue of $2,607,608 ***without*** accounting for its proposed adjustment from the 2016 and 2017 cases. Exhibit 102, schedule CNN-d2. If the Commission were to adopt Staff's lowest number as the amount Spire East over-collected, this amount would need to be reduced by $2,801,860. Exhibit 101, schedule KKB-d8. This would result in a negative ISRS of ($194,252). This would be obviously problematic, as the Commission does not have the statutory authority to approve a negative ISRS. *See* RSMo. § 393.1012 ("The commission may not approve an ISRS to the extent it would produce total annualized ISRS revenues below the lesser of one million dollars or one-half of one percent of the gas corporation's base revenue level approved by the commission in the gas corporation's most recent general rate proceeding.").

For all these reasons, the Commission should not adopt the mechanism for refunding the amount Spire over-collected that is found in Staff's proposal and should instead provide for

the refund thorough a separate and independent temporary rate adjustment as described in the section 386.520.2(2).

IV. Matters concerning the 2018 cases:

The OPC presents the following discussion of issues relating to cases GO-2018-0309 and GO-2018-0310, which the OPC will refer to as the 2018 cases.

A. Compliance:

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

No. As explained with regard to the 2016 and 2017 cases, section 393.1015 allows the Commission to approve a request for an ISRS only if it finds that the petition complies with the requirements of sections 393.1009 to 393.1015. Spire's two current petitions for new ISRS continue to request recovery for the replacement of ineligible plastic components. As such, Spire's current ISRS petitions are not in compliance with the requirements of sections 393.1009 to 393.1015 and the Commission has no authority to grant Spire's request. Spire's applications should consequently be denied thus allowing Spire to file a petition that ***does*** comply with sections 393.1009 to 393.1015.

B. Potential Costs:

i. What costs should Spire Missouri be permitted to collect?

The OPC continues to maintain that Spire's ISRS application should be denied in its entirety. However, should the Commission instead only disallow Spire's request to collect money related to ineligible plastic components, then the OPC supports the calculations presented by Staff for determining the amount Spire may collect after making this disallowance. The OPC notes that the methodology employed by Staff is consistent with the methodology used in the 2016 and 2017 cases by both Staff and the OPC and, while the OPC

does not have the resources to perform an independent audit of Staff's calculations, the numbers found by Staff appear reasonable in light of the previous case. Therefore, the OPC fully supports Staff's determination of the amount Spire would be eligible to collect after disallowing recovery for the replacement of ineligible plastic components.[17] However, the OPC does not support Staff's recommendation that Spire be allowed to collect this amount for the reasons laid out below.

a. Spire has failed to present any evidence showing that any of the pipes (plastic, cast-iron, and steel) it was replacing were worn out or deteriorated

Missouri Revised Statute section 393.150.2 states that "[a]t any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the gas corporation[.]" Despite this, Spire has failed to present any evidence to show that the replacement of plastic, steel, or cast-iron pipes that it is claiming as ISRS eligible were "worn out or deteriorated" and thus actually meet the definition of "gas utility plant projects" found in section 393.1009(5)(a). As such, Spire has failed to meet both its burden of production and its burden of persuasion with regard to the ISRS eligibility of these replacements and the Commission should reject them.

The fundamental problem with Spire's entire position is captured in the response it gave to the OPC's request for proof that the pipes being replaced are worn out or in a deteriorated condition. Exhibit 206, pg. 1. In short, Spire stated that if considered any pipe

[17] The direct testimony of Spire's witnesses do not identify whether the issues they are raising apply to the 2016 and 2017 cases or the 2018 cases. To the extent that Spire continues to make any of the same arguments regarding the proper calculation for the amount of ineligible plastic components discussed in this brief with regard to the 2016 and 2017 cases (including, for example, the removal of relocations, the removal of service transfers and reconnects, the removal of the blanket work orders, and the removal of plastic pipes that are past their average service life) in the 2018 cases, the OPC reiterates the arguments already made as to why these items should be removed and not included in any calculation of the amount Spire may collect after disallowing the replacement of ineligible plastic components.

subject to the steel and cast-iron replacement program to be "by definition worn out or in [a] deteriorated condition." *Id.* However, this position is actually the complete opposite of both the plain language of section 393.1009 and the Missouri Court cases that have interpreted it. *See* RSMo. § 393.1009(5)(a); *PSC v. Office of Pub. Counsel (In re Laclede Gas Co.)*, 539 S.W.3d 835 (Mo. App. W.D. 2017); *Verified Application & in re Liberty Energy (Midstates) Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520 (Mo. Banc 2015). Contrary to Spire's inexplicable interpretation of the statute and case law, the company actually does have to prove that the pipes that it is replacing are worn out or deteriorated in order for those replacements to be eligible for ISRS recovery. Unfortunately for Spire, it cannot prove that the pipes it is replacing are worn out or deteriorated because it has refused to perform testing on any of the pipe it abandoned. Exhibit 207, pgs. 2-3. As a result, there is no evidence in the record upon which Spire can rely to meet its evidentiary burdens.

Even though Spire has failed to present any evidence to show that any of the plastic, steel, or cast-iron pipes being retired are worn out or deteriorated, it is conceivable that Spire might try to regurgitate the "average service life" argument it made regarding plastic pipes included in Staff's calculation of over-collections in the 2016 and 2017 cases. In other words, Spire might try to point to the age of the pipes being replaced as proof of their worn out or deteriorated condition. Should Spire make such an argument, then the OPC would reiterate the position stated in the discussion of 2016 and 2017 cases regarding why age or "average service life" is not an appropriate standard for determining when pipes are worn out or deteriorated.

In addition, the OPC notes that even if the Commission accepts Spire's clearly erroneous argument, the record ***still*** shows that Spire was removing pipes that were not worn out or deteriorated. Both of the workorders entered into evidence by the OPC show that 100% of the steel mains being replaced by Spire had not yet exceeded their average service

life. Exhibit 208, pg. 10; Exhibit 209, pgs. 8-9. In addition, more than 60% of cast iron mains in one order and almost 30% of cast-iron mains in the second were also not beyond their average service life. Exhibit 208, pg. 10; Exhibit 209, pgs. 8-9. These numbers are further supported by the workorder found in Ms. Bolin's testimony which again show 100% of the steel mains and more than 80% of the case-iron mains had not yet reached the average service life. Exhibit 101, schedule KKB-d2, pg. 10. In fact, the workorder attached to Ms. Bolin's testimony shows that Spire was removing steel mains that had been installed as late as 2008, less than ten years before they were removed, yet were claiming these pipes were "worn out and deteriorated." *Id.*

Because Spire cannot meet its burden to prove that the pipes it retired as part of its claimed "replacements" were actually worn out or deteriorated as required by under section 393.1009(5)(a), the Commission should reject Spire's application for ISRS recovery as to all plant claimed as ISRS eligible under that definition.

b. Spire has failed to present any evidence showing that the relocations it is claiming as ISRS eligible meet the requirements of section 393.1009(5)(c).

Under the definition of gas utility plant project as set out in section 393.1009(5)(c), a relocation is only ISRS eligible if it meets all three of the following requirements: (1) the relocation is "required due to construction or improvement of a highway, road, street, public way, or other public work," (2) the relocation is done "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," and (3) "the costs related to such projects have not been reimbursed to the gas corporation." Spire has failed to show that any of the relocations it is requesting recovery for meet any of these three requirements. For example, Spire has offered no evidence that any of its alleged relocations were required due to construction or improvement of a highway,

road, street, public way, or other public work. In fact, Spire has explicitly claimed that it was performing relocations ***not*** for that purpose, but rather to correct issues regarding the pipe's "angle of repose."[18] Exhibit 6, pg. 5. Spire has also failed to show that any of the relocations were requested by an entity having the power of eminent domain, which the OPC presumes would be quite easy to prove given that Spire would only have needed to introduce documentation of that request.

The most troubling issue, however, is the fact that Spire has presented no evidence to show that Spire has not already been reimbursed for the costs of these relocations. This is highly suspicious given that case law suggests that a utility should almost always be capable of receiving some form of compensation when it is required to relocate its facilities. *See St. Charles Cty. v. Laclede Gas Co.*, 356 S.W.3d 137, 140 (Mo. Banc 2011). Therefore, it is difficult to believe that Spire has failed to receive reimbursement on ***any*** of the large number of projects it is claiming as ISRS eligible relocations. Adding to this is the fact that Spire's applications lists their main relocations as being "net of reimbursements," which again strongly suggests that Spire is receiving some form of reimbursement. Exhibit 1, Appendix B, pg. 2; Exhibit 2, Appendix B, pg. 2. Therefore, not only has Spire failed to present any evidence to meet its burden of proving these relocations are ISRS eligible as defined by section 393.1009(5)(c), the evidence in the record actually suggests that these relocations are ***not*** ISRS eligible. The Commission should consequently deny Spire's application to the

[18] Of course, the OPC has previously pointed out that this "relocation" was actually more likely a replacement given that is what is stated on the workorder itself. Regardless, there is still no evidence showing that any of the other relocations claimed by the company were required due to construction or improvement of a highway, road, street, public way, or other public work.

extent that it requests recovery for any claimed relocations under the definition of "gas plant project" found in Section 393.1009(5)(c).

C. **Rate Design:**

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

As the OPC has previously stated, Spire's 2018 ISRS should be denied. As such, there is no reason for Spire's 2018 ISRS rates to be calculated at all. However, should the Commission decide to issue Spire an ISRS regardless, then Spire's rates should be calculated after first removing the costs associated with any plant additions claimed as a replacement under section 393.1009(5)(a) or a relocation under section 393.1009(5)(c) for the reasons laid out above.[19] Once these costs have been removed, the ISRS revenue requirement for the remaining costs may be calculated using standard methodology consistent with that found in the direct testimony of Staff witnesses Caroline Newkirk and Ali Arabian. *See* Exhibit 102, Schedule CCN-d2; Exhibit 104 Schedule AA-d2. The actual rate design should be determined in a matter consistent with the method employed by Staff's witness David Sommerer. *See* Exhibit 105, Schedule DMS-d3.

WHEREFORE, the OPC prays that the Commission will accept all the statements made in the above *Brief*, find in its favor on each of the issues addressed therein, and grant such other relief as it finds appropriate.

[19] The OPC is not taking the position that Spire may never recover these costs. Rather, the OPC is arguing solely that Spire has failed to prove that the infrastructure is ISRS eligible. Spire could easily withdraw their 2018 ISRS application and refile it the next day with all the necessary evidence (assuming such evidence exists) thus permitting them recovery through an ISRS. Further, even if Spire was incapable of proving their claimed replacements and relocations were ISRS eligible, Spire could still seek recovery for those plant additions through a general rate case. In other words, a ruling by the Commission denying spire recovery of the costs associated with these replacements and relocations through an ISRS would not bar Spire from adding that plant to its rate base in a future rate case.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing have been mailed, emailed, or hand-delivered to all counsel of record this 6th day of September, 2018.

/s/ John Clizer