BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Spire Missouri Inc.'s d/b/a Spire's Request to Decrease WNAR	))	Case No. GO-2019-0058 Tracking No. YG-2019-0039
In the Matter of Spire Missouri Inc.'s d/b/a Spire's Request to Increase its WNAR	))	Case No. GO-2019-0059 Tracking No. YG-2019-0040

POST-HEARING BRIEF
of
SPIRE MISSOURI, INC.

January 29, 2019

Respectfully submitted,

SPIRE MISSOURI INC.

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SPIRE MISSOURI INC'S POST HEARING BRIEF

COMES NOW Spire Missouri Inc, d/b/a Spire ("Spire" or "Company"), on behalf of its operating units, Spire East and Spire West, and, pursuant to the procedural order in these cases, submits its Post-Hearing Brief.

INTRODUCTION

This proceeding concerns the proper interpretation to be given to certain provisions of the Company's Weather Normalization Adjustment Rider ("WNAR") tariff. More specifically, it concerns whether the tariff's language which states that WNAR adjustments shall be calculated using *"the total normal heating degree days based upon Staff's daily normal weather as determined in the most recent rate case"* means:

a.) That the Staff's ranking methodology that was used to establish the normal heating degree days ("HDDs") in the Company's most recent rate cases are to be updated and re-applied each time the Company makes a WNAR adjustment between rate cases or,

b.) That Staff's normal HDDs that were set and determined in the Company's most recent rate cases are to be used in making each WNAR adjustment between rate cases without re-application of the ranking methodology?

As discussed below, the Company believes its interpretation of the tariff, as set forth in alternative b, is the correct one. There are a number of considerations that support this conclusion, some related to how the WNAR tariff came into being and others relating to the wording of the tariff itself. They can be summarized as follows:

- The manner in which Staff initially proposed the WNAR tariff demonstrates that Staff was never interested, as it now claims, in perfecting a workable, accurate or effective mechanism for addressing the impact of weather on customer usage. Instead, it shows that Staff's primary intent was to promote a mechanism that would have left most weather impacts unaddressed, while worsening rather than improving the level of protection from weather impacts already provided by the Company's existing rate design.
- Staff's and OPC's more recent arguments supporting their interpretation of the WNAR tariff grossly exaggerates the impact that the re-ranking of degree days has on the accuracy and volatility of WNAR adjustments;
- As Staff did when it originally introduced the WNAR tariff in the rate case, Staff has raised a number of erroneous arguments at the last possible moment, i.e., in the evidentiary hearing, thereby depriving the Company of a reasonable opportunity to rebut them.
- The plain and ordinary meaning of the words "as determined" signifies something that is fixed and finalized, not something that is ever changeable as Staff's position suggests;

- The words "based upon Staff's daily normal weather" do not in any way convey that Staff's ranking method is to be reapplied with each WNAR adjustment, particularly in the absence of any language in the tariff that even mentions the ranking concept.
- The Staff has effectively conceded that the word "method" should have been included in the language of the WNAR tariff that Staff itself drafted, if that language was intended to authorize a re-application of the method each time a WNAR adjustment is calculated.
- As the drafting party, the Staff had an obligation to clearly state or otherwise communicate that its tariff was intended to mandate re-application of the ranking method for each WNAR adjustment – an obligation that Staff did not satisfy.
- The Company's interpretation is far more consistent with how other adjustment mechanisms use the outputs determined in a rate case.
- If Staff truly believed its tariff interpretation, which is a departure from prior applications, why was the issue not thoroughly broached as part of the rate case decision, rather than now being proposed in a separate, less informed process.

For all of these reasons, Spire respectfully requests that the Commission issue an order finding that the Company has correctly interpreted meaning and effect of WNAR tariff provisions at issue in this proceeding and that the Company's interpretation should be applied until this issue is revisited in its next general rate case. In the meantime, Spire will certainly cooperate with Staff in accumulating additional information on the results

produced by the two methods at issue in this case. That exercise should put the Commission and the parties in a much better position to address this issue in a more informed and hopefully agreeable manner when that rate case occurs.

ORIGINS OF THE WNAR TARIFF

In assessing this issue and the credibility of the parties' respective positions, the Company believes it is important for the Commission to consider how the WNAR tariff originated. In its earliest form, the WNAR tariff began as a specimen tariff that was drafted by the Commission Staff and presented on the last day of the regular evidentiary hearings in the Company's most recent rate cases. The tariff was offered by Staff as a potential alternative to the Company's Revenue Stabilization Mechanism ("RSM") proposal. Because the Staff believed the proposed RSM was impermissibly broad, it had recommended that any approval of the mechanism be limited to only those variations in customer usage due to weather. The Staff justified this limitation, in part, on its representation to the Commission that a weather-only adjustment clause would still adjust for 95% to 97% of any customer usage variations.

The specimen WNAR tariff actually proposed by Staff, however, contained an extraordinarily low, "hard" cap of 1 cent per therm. This hard cap meant that rates would *not* be adjusted to recognize any customer usage variation that had a dollar value in excess of the cap, but that such amounts would instead be absorbed or retained by the Company. This would, in turn, ensure that Staff's proposed weather mechanism would not come

anywhere close to achieving Staff's predicted 95% to 97?% level of protection from customer usage variations in unusually cold or warm winters.[1]

In explaining its specimen tariff on the last day of the evidentiary hearing in the rate cases, Staff made no mention of this cap or its significant impact on the level of protection that would actually be provided by the adjustment mechanism set forth therein.[2] To the contrary, Mr. Stahlman's discussion of the specimen tariff during the rate case hearing would have led the Commission to believe that the cap would have *no* impact on the degree to which its proposed mechanism actually accounted for the impact of weather on customer usage. Specifically, Mr. Stahlman testified that the adjustment mechanism was just like the Company's RSM, only limited to weather.[3] This was not true, since the Company's proposed RSM had no hard cap, but instead would have permitted all customer usage variations to be reconciled.[4]

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[1]Surprisingly, Staff witness Stahlman testified during the evidentiary hearing in this case that he had no idea what the 1 cent cap would do in terms of the efficacy of the weather adjustment mechanism at the time it was being proposed via Staff's specimen tariff. (*See* Tr. 130, line 19 to Tr. 131, line 13). Nor did he attempt to analyze the matter after Company witness Glenn Buck advised Staff of its hugely detrimental effect on the mechanism's ability to actually address the impact of weather on customer usage. (Tr. 131, lines 9-16). If taken at face value, however, Mr. Stahlman's testimony would suggest that at the very time the Staff was striving mightily to draft just the right words necessary to enshrine re-application of its ranking method in the WNAR tariff – all for the sake of increased inaccuracy – it was completely oblivious and unconcerned about the impact its 1 cent cap would have on the efficacy and accuracy of the mechanism. Moreover, this blindness to the impact of the 1 cent cap occurred even though Mr. Stahlman developed the WNAR tariff in collaboration with other Staff members who were intimately familiar with virtually every aspect of the Company's rate design, billing determinants, weather impacts on customer usage, and other information relevant to the potential impact of such a cap. That hardly sounds plausible.

[2]See Ex. 208, Tr. p. 2433, line 9 to Tr. 2438, line 5.

[3]Ex. 208, Tr. 2433, lines 14-22.

[4] Mr. Stahlman also asserted in his rebuttal testimony, that the specimen tariff he presented was modeled off example weather clause tariffs that had been attached to his rebuttal testimony in the rate cases. (Ex. 203, p.3, lines 4-5). During the evidentiary hearing in this proceeding, however, Mr. Stahlman acknowledged that these other tariffs did not include a cap and he was unaware of any other weather adjustment clause approved for a utility that had a hard cap like the one proposed by Staff in the specimen tariff. (Tr. 135-137).

Mr. Stahlman even repeated his earlier testimony that limiting the Company's RSM to only weather would still account for 95% to 98% of the variations in customer usage[5] This was equally incorrect, since the hard cap Staff was proposing would, in unusually cold or warm weather, cover only a fraction of the variation in customer usage resulting from weather. In other words, since the effect of the adjustment mechanism is greatest when the weather is the most extreme, Staff's hard cap would effectively gut the mechanism just when it would be most effective.

Finally, Mr. Stahlman claimed that Staff's proposed mechanism, unlike the Company's, was consistent with the statute that authorized such adjustment mechanisms.[6] Again this was an inaccurate assertion since the statute referenced by Mr. Stahlman has nothing in it to suggest that adjustments for customer usage variations were to be sharply limited by a hard, artificial cap. In fact, one could easily argue that Staff's proposal departed far more significantly from the enabling statute than the Company's proposal, i.e. Staff's mechanism contained a hard cap on any adjustments that could be made, did nothing to adjust for commercial customer usage variations, and did nothing to address usage variations resulting from conservation – all of which were permitted by the statute.[7]

In the midst of these wildly inaccurate assertions, Mr. Stahlman said a few sentences about the use of Staff's weather normalization method in the WNAR mechanism. As the transcript of his explanation shows, however, Mr. Stahlman made no mention of re-

[5]Ex. 208, Tr. 2436, lines 1-6. In his explanation during the evidentiary hearing, Mr. Stahlman gave an upper range of 98% versus the range of 97% in his pre-filed testimony.
[6]Ex. 208, Tr. 2435, lines 21-23.
[7]As currently codified in Section 386.266.3 RSMo., the enabling statute for the WNAR provides that the Commission may " . . .approve rate schedules authorizing periodic rate adjustments outside of general rate proceedings to adjust rates of customers in eligible customer classes to account for the impact on utility revenues of increases or decreases in residential and commercial customer usage due to variations in either weather, conservation, or both."

applying the ranking method when WNAR adjustments were made.[8] Moreover, it was not clear then and is not clear today whether his reference to the use of Staff's normal weather was intended to connote that the total historical normal HDDs were to be based on Staff's method, as the tariff states, or that it and the ranking method were to be used for some other purpose.[9]

In any event, Staff's explanation of how the WNAR tariff was intended to operate was clearly insufficient to put the Company on notice that Staff's ranking method was to be performed each time an adjustment was made under the mechanism. Perhaps if the Staff had proposed the tariff in direct, rebuttal or surrebuttal testimony, rather than on the last day of the evidentiary hearing, the Company could have conducted discovery and learned more about what this tariff provision meant. This would have been far more consistent with what happened with other tariff matters during the rate case process where, most, if not all tariff changes, were circulated with the parties in the case and filed in stipulations. As a result, the tariffs were discussed and there was an avenue for the intervenors to make edits and suggestions. Or perhaps if Staff's focus had been on how it intended to determine normal weather, rather than on inserting a low, hard cap that would have sabotaged the

[8]See See Ex. 208, Tr. p. 2433, line 9 to Tr. 2438, line 5.

[9]During his cross-examination of Company witness Weitzel, Staff counsel tried to imply that Mr. Stahlman's use of the words "would compute" in describing the use of Staff's weather normal in the WNAR mechanism meant that the ranking method would be employed prospectively in calculating WNAR adjustments. (Tr. 59 -62). As Mr. Weitzel explained, however, it was not clear what Mr. Stahlman meant given that he was talking about a hypothetical tariff at the time. (Tr. 60, lines 1-2) in which case "would compute" could simply connote that Staff's method would be used to compute the historical degree days referenced in the tariff should the tariff be approved. The fact that Mr. Stahlman stated in the preceding sentence that "we've done this calculation already" (Tr. 59, lines 10-11) would certainly give the impression that he was referring to something that had already been computed and not something that would be computed.

weather clause and rendered it effectively useless, then the Company and the Commission might have had an opportunity to consider this aspect of the tariff.

Instead, the Company used the limited opportunity it was given to respond to the specimen tariff to focus on what appeared to be its most obvious defect, that is, the low, hard cap. To that end, the Company filed the affidavit of Glenn Buck, in which Mr. Buck advised the Commission that the hard cap would eviscerate the usefulness of the adjustment mechanism as a means of addressing weather impacts.[10] In fact, Mr. Buck testified that the hard cap would actually *worsen* rather than mitigate the impact of weather on customer usage, compared to the level of weather protection already being provided by the Company's existing rate design.[11] Even after the Company informed Staff of the impact its hard cap had on the efficacy of the mechanism., the Staff remained unmoved.[12] Indeed, rather than alter the cap, the Staff actually proposed a 100 basis point downward adjustment to the Company's ROE to supposedly account for the reduction in risk that its specimen tariff would have instead increased. Fortunately, the Commission put an end to this disturbing episode by ultimately modifying the hard cap as proposed by the Company.

FROM SILENCE TO HYPERBOLE

Given its earlier endorsement of a weather clause that would have done *nothing* to address a sizable portion of weather impacts on customer usage, it was puzzling to see Staff argue so strenuously in this proceeding that its interpretation of the same tariff should be adopted, in part, because it would supposedly produce a more accurate, and less volatile,

[10] Tr. 133, line 7 to Tr. 134, line 11.
[11] *Id*.
[12] Tr. 135.

calculation of such weather impacts. In fact, having remained silent on its own earlier – and far more consequential – assault on the efficacy of the WNAR, the Staff went to great lengths during the hearing to exaggerate the importance of its ranking method in preserving the accuracy of the WNAR, presenting three witnesses, multiple graphs and numerous tables. All of this seemed designed to convince the Commission that customers would be subject to volatile and significantly inaccurate adjustments if the Staff's re-ranking method was not endorsed by the Commission.

In reality, however, these overwrought assertions simply obscure how truly inconsequential Staff's ranking method is to a more accurate and less volatile reconciliation of weather and its impact on customer usage. As the evidentiary record and Staff's own testimony made clear, the WNAR requires that weather impacts be measured over a yearly period, with adjustments made only when all of the "back office" puts and takes are netted out into a final adjustment. In other words, the Company's method, which relies on the historical normal degree days established in the rate case, may produce a different result on any given day than Staff's re-ranking approach, but then the difference is made up on a different day. As a consequence, the two methods produce remarkably consistent results because in the end both Staff and the Company compare the same total normalized degree days established in the rate cases to the same total actual degree days over the annual and monthly periods.[13]

The inconsequential nature of the differences produced by the two methods was confirmed by Staff witness Robin Kleithermes during the evidentiary hearing. She testified that a comparative application of the two methods to a prior year (2016) for Spire East had

[13]Tr. 156, lines 14-17; see also Tr. 95, lines 5-15.

resulted in a monetary difference of approximately $130,000, or about 4/100ths of 1% based on Spire East's residential distribution revenues of approximately $272,000 million.[14] And even this nominal difference may be overstated as shown by the refined comparisons set forth in the late filed exhibits submitted on January 23, 2019, which identify a total difference between the two methods of only about $80,000 (to the customers' benefit using the Company's method) or about 3/100ths of 1%.[15] Given these results, Staff's claim that its ranking method produces more accurate results is almost meaningless from a practical standpoint and certainly does not provide a material policy rationale for Staff's assertion that accuracy considerations justify its interpretation of how the tariff should be implemented.[16]

In addition to clarifying what is really at stake in this proceeding in terms of the accuracy of WNAR adjustments, Ms. Kliethermes was also helpful in putting Staff's other claims regarding the criticality of its ranking method in perspective. Specifically, she acknowledged that the instances of volatility highlighted by Staff all get "netted out" in the annual reconciliation of normal HDDs to actual HDDs.[17] As a result, these volatility concerns, while perhaps being of some academic interest to those Staff members who do the back office work of comparing normal and actual HDDs on a daily basis, do not impact customers in any meaningful way. Instead, such differences are netted against each other and reflected in a single adjustment at the end of an annual reconciliation period.

[14]Tr. 174, line 17 to 175, line 4.
[15]See Ex. 210.
[16] From the Company's standpoint, the only practical concern it has given the small differences between the two methods, is how Staff's allocation of degree days between days in the month might impact those instances where there are seasonal rate changes. Although even here the differences in results would be modest, the Company is simply not comfortable at this point accepting Staff's method until it gains additional experience on how it might work in these circumstances.
[17] Tr. p. 175, lines 13-23

Perhaps the most egregious example of Staff's reliance on exaggeration to support its position was its fixation in looking at single days and hyping the fact that there was a difference between the historical degree days for that date and the actual degree days.[18] That the witnesses for Staff or OPC would actually assert that there is something at all significant or meaningful about such a difference is remarkable. Whether the benchmark data is comprised of degree days, daily gas prices, or some other form of daily data, there will *always* be variations between the daily benchmark data and the actual daily data that occurs in the future. The important consideration is whether the data as a whole is reasonably representative of what can be expected occur over an annual or other sustained period. To suggest otherwise by highlighting the differences that occurred on single days says nothing – and, in fact, gives a misleading impression – about the efficacy of a particular method.

INTRODUCTION OF LAST MINUTE AND UNTESTED ARGUMENTS

In addition to exaggerating the benefits and actual impacts of re-applying its ranking method with each WNAR adjustment, the Staff also introduced a number of last minute arguments during the evidentiary hearing in support of its position. Staff's actions in doing so were reminiscent of the approach it took with its specimen tariff in the rate case, i.e. such arguments were not made in its pre-filed testimony and thus were not subject to discovery or rebuttal. Moreover, Staff's arguments seemed designed to confuse rather than enlighten the Commission regarding whether such a re-application is mandated by the WNAR tariff.

[18]See e.g. Ex. 204, pp. 4-5 and the extended discussion of April 19, 2018.

For example, Staff asserted that it did not establish any normal calendar degree days during the rate case,[19] presumably implying that there might not be a benchmark against which the Company could reconcile actual degrees days to normal degree days under its method. A review of the comparisons of the two methods submitted by the Company and Staff, however, shows that this is simply not true.[20]

Staff also raised for the first time at the evidentiary hearing an argument that the Company's approach would change or somehow impact the coefficients set forth in the tariff. Again this is simply not true. To the contrary, as Staff witness Stahlman indicated in his direct testimony, the Beta coefficients would only be impacted if the normal degree days fixed in the rate cases were updated – something neither the Company nor Staff are proposing to do.[21]

Equally irrelevant is the assertion that Staff's interpretation must be correct because (NDDij – ADDij) in the formula is a "variable". This variable, which simply reflects that the degree days, billing cycles, and customers will change from month to month is not a justification for Staff's position instead it simply recognizes that the normal heating degree days determined in the rate case are being applied to different billing cycles before subtracting the varying actual degree days for those different billing cycles. The fact that it is a variable does not in any way suggest that this formula was intended to sanction a change in the normal degree days that were established in the rate case each time an WNAR adjustment is calculated. Moreover, if any of these factors were in some way supportive of Staff's position on how the tariff should be interpreted, it is nothing short of astonishing

[19] Tr 32, lines 9-15.
[20] See Ex. 208.
[21] *See* Exh. 202, p. 2, line 19 to p. 3, line 3.

that they were not even mentioned, let alone discussed, in either the direct or rebuttal testimony of Staff or OPC.

As discussed below, the lack of substance in the last-minute arguments made by Staff at the evidentiary hearing is further underscored by the answers to those questions which the Commission directed the parties to provide in their respective brief.

RESPONSE TO COMMISSION QUESTIONS

In its December 18, 2018 Order Concerning Brief, the Commission instructed the Parties to address certain questions in their respective briefs. Pursuant to the Commission's directive, Spire submits the following responses.

1. In their briefs, each party shall set out a plain and simple example of both of the two different methods described in the evidence at the evidentiary hearing for calculating the "NDDij" factor used in the weather normalization adjustment ("WNA") formula adopted in the tariff sheets ("Tariffs").

Such an example was provided in late-filed Exhibit 210. Exhibit 210 shows that both the Staff and the Company agree on just about all the inputs to this equation. Ex 210 shows the same inputs for Observed or actual HDDs, same bill cycles, same customer counts or charges, same betta or coefficient, same monthly NDD's and same annual NDD's. As further shown by Exhibit 210, which applied the two methods to 2016 data for Spire East, Staff's method would produce a credit of $5,069,786 to the customer. The Company's method would produce a larger credit to the customer of $5,150,081. As discussed above, this represents a difference of $80,295 or about 3/100th of 1% as a percentage of Spire East's total residential gas revenues.[22]

[22]Ex. 210; *See also* Tr. 174, line 17 to 175, line 4.

This immaterial difference, that goes in the customers favor using the Company's method, does not tell the same doom and gloom story that the Staff has spent significant time and resources presenting, including needing 3 witnesses to discuss correlation and volatility.

2. In their briefs, the parties shall address whether the Tariffs' definition of the NDDij factor is ambiguous.

The Company submits that there is nothing ambiguous about tariff language which specifies that WNAR adjustments shall be based on:

"the total normal heating degree days based upon Staff's daily normal weather as determined in the most recent rate case."

There is simply nothing in the WNAR tariff sheets that were approved by the Commission that references, endorses or otherwise supports the use of this ranking methodology for purposes of calculating WNAR adjustments. The tariff does define the NHDDs that are to be used in the WNAR calculation as the "total normal heating degree days based upon Staff's daily normal weather *as determined in the most recent rate case*." See Original Tariff Sheet No. 13 (*emphasis supplied*). Consistent with this tariff provision, and as discussed more fully below, the Company used the specific NHDDs determined by Staff in the most recent rate case to calculate its WNAR adjustment based on a 30-year adjusted average of NOAA data. The tariff does not, however, describe or even mention the methodology that Staff is now proposing to use.

3. In their briefs, the parties shall address how adopting Spire Missouri, Inc.'s methodology may affect the "β" ("Beta") value in the Tariffs' WNA formula.

The Company's method, which it believes is mandated by the tariff, would have *no* effect on the Beta value at all. In fact, the question might be rephrased to ask how adopting

Staff's methodology may affect the Beta since Staff's method is rearranging and changing the daily normal heating degree days in a month. The Company is using the normal heating degree days as determined in the rate case which drove the coefficients used in this tariff. Mr. Stahlman addresses this in his direct testimony:

> Q. Why did the tariff language not include "method" to state "based upon Staff's daily normal weather ***method***"?
>
> A. The inclusion of the word "method" could imply that Spire would need to recalculate normal weather by rolling the 30-year period forward to the current period. However, it is important to maintain the 30-year normal period that was established in the rate case because that was the basis for the coefficient ("β") used in Spire's tariffs; changing the period would change the relationship between the calculated normal weather and natural gas usage.[23]

Mr. Stahlman's statement strongly indicates that as long as the total normal degree days established in the rate case are maintained when making WNAR adjustments there is *no* impact on the coefficient. It is worth noting that the ("β") value and any potential impact on it from using the Company's method had never been an issue between Staff and the Company until the evidentiary hearing. Moreover, no such concern was raised by either Staff or OPC in their direct or rebuttal testimony regarding such potential impacts, because there are none.

Since both Staff and the Company are using the same 30 year normal as determined in the rate case, the coefficient should be the same. However, it is interesting that the authors of the workpapers that computed the coeffcients seemed to be confused on how the beta would be impacted.[24] In short, if the Company is using the same cumulative monthly

[23] *See* Exh. 202, p. 2, line 19 to p. 3, line 3.
[24] *See* Dr. Won: Tr. 112, lines 16-21; p. 112, lines 22-25; p. 113, Lines 1-19; Robin Kleithermes: Tr. 175, lines 24-25; 176, lines 1-10.

and annual normal HDD then the coefficients will not be impacted. In fact, Exhibit No. 210 has the *same* normal HDD for both Company and Staff and the same coefficient.

ARGUMENT ON IDENTIFIED ISSUES

(1) Does the Weather Normalization Adjustment Rider ("WNAR") tariff language of Spire Missouri East and Spire Missouri West [i.e., P.S.C. MO. No. 7, Sheet No. 13 and P.S.C. MO. No. 8, Sheet No. 13] which was ordered in the Commission's Amended Report and Order in Case Nos. GR-2017-0215 and GR- 2017-0216 mean (a) that daily normal weather ranked on current accumulation period actual daily temperature data and compared to current accumulation period actual daily weather should be used for purposes of calculating the WNAR adjustments or (b) that daily normal weather ranked on 2016 actual daily temperature data and compared to current accumulation period [2018 in this case] actual daily weather should be used for purposes of calculating the WNAR adjustments?

The Company opposed this formulation of the issue as it was drafted by the Staff. It did so because (1) (a), as written, obscures the fact that Staff is proposing to re-apply its ranking methodology each time a WNAR rate adjustment is calculated – a result that the Company believes is neither required nor authorized by its current WNAR tariff. Moreover, subpart (1)(b) referenced the use of 2016 weather data without acknowledging that this is the weather data that was used to establish rates in the Company's last rate case. In other words, this is not a randomly selected set of data that the Company is proposing to use, but the specific output of the rate case process.

As previously discussed, the Company believes that a more accurate and straight-forward formulation of the issue would be: Does the tariff language stating that the WNAR adjustments shall be calculated using *"the total normal heating degree days based upon Staff's daily normal weather as determined in the most recent rate case"* mean:

(a) That the Staff's ranking methodology that was used to create the normal HDDs in the rate cases is to be updated and re-applied in making each WNAR adjustment between rate cases or,

(b) That Staff's normal HDDs that were set and determined in the rate case, are to used in making each WNAR adjustment between rate cases without re-application of the ranking methodology?

Whether using this formulation of the issue, or the description provided by Staff in its List of Issue, the tariff clearly supports alternative b) in both scenarios as the most reasonable interpretation of what this language means.

(a) The plain and ordinary meaning of the words "as determined" signifies something that is fixed and finalized, not something that is ever changeable.

It is well established under customary rules of statutory construction (which are equally applicable to tariffs) that statutes are to be interpreted using the plain and ordinary meaning of the words set forth therein.[25] The authoritative *Merriam-Webster* dictionary defines the word "determine" as follows:[26]

> Definition of determine for transitive verb: 1. a) to fix conclusively or authoritatively. b) law: to decide by judicial sentence. c) to settle or decide by choice of alternatives or possibilities. d) resolve. 2. a) to fix the form, position, or character of beforehand: ordain. b) to bring about as a result: regulate. 3. a) to fix the boundaries of. b) to limit in extent or scope. C) to put or set an end to: terminate. 4. To find out or come to a decision about by investigation, reasoning, or calculation. Definition of determine for intransitive verb. 1. To come to a decision. 2. To come to an end or become void.

As Mr. Weitzel explained, looking at the plain and ordinary definition of "determine", one sees words like "fix", "resolve", "to limit in extent or scope", "to put or set an end to", "to come to a decision", and "to come to an end or become void". Consistent with that meaning, the Company is using Staff's daily normal weather as determined in the

[25] *See* ***Dubinsky v. St. Louis Blues Hockey Club***, 229 S.W.3d 126, 130 (Mo.App.E.D. 2007); ***State v. Barazza,*** 238 S.W.3d 187, 192 (Mo.App.W.D. 2007); ***Burns v. Elk River Ambulance, Inc.,*** 55 S.W.3d 466, 473 (Mo.App.SD. 2001).
[26] Ex. 101, p. 4, lines 14-26.

most recent rate case.[27] Conversely, the word "determined" cannot be reasonably defined as meaning something that will be changed or re-determined for current weather in 2018, 2019, 2020, etc. as Staff is proposing.[28]

In response to this argument, the Staff took the position during the evidentiary hearing that the key word in this phrase in the tariff is the word "as".[29] The Staff went on to assert that by using the word "as", the tariff was intended to connote the concept that adjustments under the WNAR were to be calculated "in the same manner or way" as the Staff established degree days in the rate case, meaning that HDDs were to be re-ranked when an adjustment was made.

The primary problem with this assertion is that it runs counter to how nearly identical wording has been interpreted that also use ratemaking outputs determined in a rate cases to calculate adjustments under various adjustment mechanisms. As Mr. Weitzel explained, one prime example of this relates to the operation of the ISRS mechanism.[30] In the same rate cases that the Commission approved the WNAR tariff, it also determined a return on equity, cost of debt and capital structure based on various methodologies proposed by the parties.

Under the ISRS statute, these outputs are then used to calculate ISRS adjustments. In fact, the ISRS statute uses language that is very similar to that used in the WNAR to specify the use of these ratemaking outputs. Specifically, the statute says that in calculating ISRS adjustments, the Commission shall use:

(2) The gas corporation's actual regulatory capital structure *as determined during the most recent general rate proceeding* of the gas corporation;

[27] Ex. 101, p. 4, lines 1-11.
[28] *Id*.
[29] Tr. 33, lines 2-6.
[30] Ex. 100, 8-9.

(3) The actual cost rates for the gas corporation's debt and preferred stock *as determined during the most recent general rate proceeding* of the gas corporation;

(4) The gas corporation's cost of common equity *as determined during the most recent general rate proceeding* of the gas corporation; (emphasis supplied)[31]

As Company witness Weitzel explained in both his direct testimony and during the evidentiary hearing, this language has never been interpreted to mean that the methodology used to determine capital structure, debt costs and the cost of common equity is re-employed to adjust these outputs each time a petition is filed for an ISRS adjustment.[32] The Staff may have its own esoteric view on what the words "as determined" were intended to mean, but clearly such an interpretation cannot be reconciled with how that phrase is understood and implemented elsewhere.

(b) The words "based upon Staff's daily normal weather" do not in any way convey that Staff's ranking method was to be reapplied with each WNAR adjustment, particularly in the absence of any language in the tariff that even mentions the ranking concept.

If the Staff had meant to convey that its specimen tariff language was intended to require the re-application of its ranking method each time a WNAR adjustment is calculated it surely could have done a better job of articulating that concept in the tariff as opposed to just stating that WNAR calculations will reflect "total normal heating degree days *based upon Staff's daily normal weather* as determined in the rate case." Consistent with this tariff provision, the Company used the specific total NHDDs determined by Staff in the most recent rate case to calculate its WNAR adjustment based on a 30-year adjusted average of NOAA data.

[31] See Subdivisions (2)(3) and (4) of Section 393.1015.4
[32] Ex. 100, p. 8, line 12 to p. 9, line 19, Tr. pp. 80-82.

If Staff had intended something different, i.e. that its ranking approach be–reapplied each time a WNAR adjustment is calculated, a good place to start, of course, would have been to actually mention the ranking method somewhere in the tariff. As previously discussed, however, there is simply nothing in the WNAR tariff sheets that references, endorses or otherwise supports the use of this ranking methodology for purposes of calculating WNAR adjustments.[33] Such an omission is particularly noteworthy given how detailed other portions of the tariff are in describing how the WNAR process will work.[34]

Absent some reference in the tariff to re-applying Staff's ranking method each time a WNAR adjustment is made, the words "based upon Staff's normal daily weather" seems to merely indicate that the total historical normal degree days that were established in the rate case were "*based upon Staff's daily normal weather"* and were to be used in the WNAR calculation. That is exactly what the Company did. The fact that the words "as determined in the rate case" follows this phrase only reinforces such an interpretation in that it strongly conveys that WNAR adjustments are to be based on a fixed and finalized set of data and not something that was to be updated and revised through some unmentioned ranking method.

(c) The Staff has effectively conceded that the word "method" should have been included in the language of the WNAR tariff it drafted if it was intended to authorize a re-application of the method each time a WNAR adjustment is calculated.

At the bottom of page 2 of his direct testimony, Staff witness Stahlman states that the word "method" was not included in the tariff language because it might have implied that "Spire would need to recalculate normal weather by rolling the 30-year period [used

[33] Ex. 100, p. 5, lines 7-19.
[34] *Id.*

to derive normal weather] forward to the current period."[35] Mr. Stahlman goes on to explain why updating or re-calculating normal weather would have created various problems, including requiring the need to adjust the coefficients used in the tariff.[36]

As Company witness Weitzel explained, however, this is the very same point that the Company is making as to why its interpretation of the tariff is the correct one. Mr. Weitzel fully agreed with Mr. Stahlman that by not including the word "method" in this language, the tariff was intended to establish the 30-year normal as a data point that was determined and fixed in the rate cases rather than something to be updated and recalculated with each WNAR adjustment.[37] But the same exact interpretation is true regarding whether the tariff requires that Staff's ranking method be updated and re-applied with each WNAR adjustment.[38] In other words, if the absence of the word "method" was meant to imply that the 30 year normal *as determined in the rate case* would remain fixed for purposes of calculating the WNAR adjustments, then the absence of any reference in the tariff to Staff's ranking method should also be construed to mean that that the output of the ranking method *as determined in the rate case* was to remain fixed and not updated and reapplied in calculating such adjustments.[39] As a matter of simple logic, Staff cannot have it both ways on this point.

(d) As the drafting party, the Staff had an obligation to clearly state in the tariff or otherwise communicate that the tariff was intended to authorize and mandate re-application of the ranking method each time a WNAR adjustment is made – an obligation that Staff did not satisfy.

[35] Ex. 202, p. 2, line 19 to p. 3, line 3.
[36] *Id*.
[37] Ex. 101, p. 5, line 17 to p. 6, line 15.
[38] *Id.*
[39] *Id.*

It is well settled under Missouri law, that any ambiguities in a contract or other written instrument will generally be construed against the drafter of the instrument.[40] In this case, of course, that would be the Commission Staff. To the extent any ambiguity exists here, and the Company believes there is none, it should be resolved against the Staff and its interpretation. After all, it was the Staff that took the extraordinary step of drafting its own utility tariff, presenting it at the last minute and then explaining it only in oblique terms. The Company submits that it has provided compelling evidence showing why its interpretation of the tariff is correct and why there is no ambiguity. If the Commission concludes otherwise, however, the Company believes that the circumstances underlying how this tariff came to be, and Staff's role in drafting it should lead the Commission to resolve that ambiguity in the Company's favor.

(e) The Company's interpretation of the tariff is far more consistent with how other adjustment mechanism use the outputs determined in a rate case.

The Company's interpretation of how the WNAR tariff is designed to operate in terms of its use of historical degree day data is also far more consistent with how the ratemaking outputs determined in rate cases are used to calculate adjustments under various adjustment mechanisms. As previously, discussed the Company's position that the words "as determined" in the WNAR tariff means that historical normal degree day data is to be used in the WNAR calculation (rather than other data produced by application of Staff's ranking method) is certainly consistent with how capital structure, cost of debt and cost equity outputs in a rate case are used to make adjustments under the ISRS mechanism. Simply put, all of these rate elements from the rate case are fixed outputs that are then used

[40] ***Triarch Industries, Inc. v. Crabtree***, 158 S.W.3d 772, 776 (Mo. banc 2005)

to calculate ISRS charges, without modification.[41] No effort is made, as Staff is trying to do with its ranking methodology, to re-apply whatever methodologies may have been used or relied upon to develop these rate elements in the rate case for purposes of calculating ISRS charges.[42]

The interplay between historical rate case outputs and ISRS rates is hardly unique. It is instead typical of how adjustment mechanisms work. As Mr. Weitzel explained in his testimony, there are numerous, other examples of where rate elements necessary to calculate the Company's PGA/ACA charges are established in a rate case. These rate elements are then used to calculated PGA/ACA adjustments, again without any re-application of the methodology used to establish the same.[43] Among others, these would include the class volumes used to calculate PGA rates, various PGA rate design elements, etc. For example, the Company does not update the annual usage determined in the most recent rate case to spread the PGA costs over usage based on current weather or changes in efficiency that might change consumption even on a weather normalized basis.[44]

This does not necessarily mean that no rate elements can ever be re-determined outside of a rate case. But it does strongly indicate that it is not the normal custom and practice to vary such elements based on the reapplication of a specific methodology, especially where that methodology has not been spelled out in any detail in a specific tariff.[45] That is certainly the case with Staff's approach to re-applying its ranking methodology, and another reason why its interpretation should be rejected.[46]

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[41] Ex. 100, pp. 8-9.
[42] *Id*.
[43] Ex. 100, p. 9, line 24 to p. 10, line 5.
[44] *Id*.
[45] Ex. 100, p. 10, lines 8-12.
[46] *Id*.

(f) Contrary to Staff's claims, re-application of its ranking method each time there is a WNAR adjustment was never properly raised, let alone determined, by the Commission during the rate cases.

As previously discussed, the Staff did not raise, with anywhere near the degree of specificity necessary to put the Commission and other the parties on notice, the issue of whether its ranking method should be reapplied when future WNAR adjustment are made. It did not sponsor or present Dr. Won, its expert on ranking, when it proposed its specimen tariff sheet,[47] did not mention the ranking method when Staff witness Stahlman described briefly described how the WNAR would work, and did not communicate its position during the subsequent discussions which occurred as the WNAR tariff was being finalized.[48] As a result, there was no opportunity to litigate and decide the issue based on an informed consideration of the much more comprehensive record that was available in that proceeding – something that should have occurred if Staff believed its interpretation was correct.

Despite these shortcomings, the Staff nevertheless implies with its reliance on the words "as determined", that the Commission nevertheless "determined" in the rate case that its ranking method should be used when making WNAR adjustments, notwithstanding the complete absence of any record to support such a determination. In support of this claim, the Staff cited a brief statement in the Report and Order that briefly mentions Staff's weather normal method in general, but does not say anything about re-applying the ranking elements of that method.[49]

[47] Tr. 94, lines 5 to Tr. 95, line 4. Not only was Dr. Won not sponsored to explain Staff's intended use of the ranking method when Staff first presented the WNAR specimen tariff, but Dr. Won also acknowledged that he did not address the interplay between Staff ranking method and a WNAR mechanism anywhere else in the rate cases. Tr. 94, lines 8 to 11.
[48] Ex. 100, p. 17, lines 1-14.
[49] Tr. 29, lines 6 – 19.

Suffice it to say that anyone participating in the evidentiary hearing witnessed the Commission making an admirable effort to gain at least a basic understanding of what the ranking method was, how it operated, and how it might be used in calculating WNAR adjustments. Given this consideration, and the degree to which Staff had to explain what its ranking method was – indeed the degree to which Staff has had to provide such an explanation in both its pre-filed testimony and during the evidentiary hearing, it is simply ludicrous to suggest that the Commission actually considered or knowingly approved its re-application in calculating WNAR adjustments. Nor it is at all appropriate to permit Staff to use this more limited proceeding to try and prevail on an issue it should have raised earlier.

(2) If the Commission determines that the weather normalization adjustment rider ("WNAR") tariff sheets of Spire Missouri East and/or Spire Missouri West [i.e., P.S.C. MO. No. 7, Sheet No. 13 and P.S.C. MO. No. 8, Sheet No. 13, respectively] are vague regarding how the WNAR rate adjustments are to be calculated, is Staff's or Spire's interpretation of the tariff and calculation method most consistent with the Commission's intent when it ordered adoption of the WNAR tariff?

The Company believes that Issue (2) as identified by Staff is not a proper issue to be considered in this proceeding. In the guise of divining Commission intent (as it may or may not have existed many months ago), the introduction of this issue is essentially attempting to litigate the merits of using the ranking method versus not using it whenever a WNAR adjustment is made. The Company does not believe that there is any ambiguity in its tariffs on this score, as there is nothing in them to suggest that Staff's ranking methodology was to be reapplied each time a WNAR adjustment is calculated. Accordingly, there is no justification for going behind the plain language of the tariff to determine Commission intent.

CONCLUSION

The Company believes that tariff provisions should be interpreted and applied in a reasonable manner that faithfully reflects the plain and ordinary meaning of their terms. To do otherwise would usurp agreed upon policies and practices in a manner that was never consciously agreed to by the parties or deliberated upon and approved by the Commission. Approval of the tariff interpretation urged by the Company will maintain agreed upon and approved procedures. Approval of the interpretation urged by Staff and OPC will not.

The Company also believes that the regulatory policies adopted by this Commission should be developed in a transparent and informed manner. The entire administrative and appellate process is designed to foster that kind of policy making by providing for the opportunity for discovery, requiring that facts and positions be articulated in pre-filed testimony, affording the opportunity for cross-examination, and providing that Commission decisions be based on competent and substantial evidence and produce findings of fact showing how controlling issues were decided by the Commission.

These fundamental attributes of sound policy making were short-circuited here. Staff's explanation of how the specimen tariff would actually operate was provided in only the most conclusory and abbreviated manner possible when it was submitted it on the last day of the regular evidentiary hearings in the Company's last rate case, and after cross-examination of the sponsoring witness had been completed. Moreover, the conclusory explanation had a glaring omission in that it did not even mention, let alone explain, a 1 cent hard cap that would have eviscerated the usefulness of the mechanism in addressing the impact of weather on customer usage.

Because it was submitted at the last possible minute, rather than in pre-filed testimony, the Company had no opportunity to conduct discovery or otherwise inquire into the details of how the mechanism would operate. Accordingly, when it was allowed to file an affidavit in response to Staff's specimen tariff, the Company focused on its obvious shortcomings, most especially the 1 cent hard cap. The Company did not address whether the tariff authorized or mandated the re-application of Staff's ranking method each time a WNAR adjustment was to be made, because the language made no mention of the ranking method and, by its terms, indicated that only historical degree day data would be used.

Now that its first WNAR adjustment has been suspended because of the Staff's insistence that it requires use of a ranking method the tariff never mentioned previously, the Company has had to deal with exaggerated assertions about how important that method is to the accuracy of WNAR adjustments. And just like the situation that occurred with the specimen tariff, it has had to respond to new factual assertions made at the evidentiary hearing, again without the benefit of any discovery or, in this instance, even the opportunity to file a responsive affidavit.

In short, Staff's policy making by ambush should be denied. The Company respectfully submits that this is not an appropriate way to formulate public policy and it should be rejected by the Commission by approving the Company's interpretation of how the WNAR mechanism is supposed to operate.

WHEREFORE, for the foregoing reasons, Spire Missouri Inc. respectfully requests that the Commission consider the arguments set forth in this Post-Hearing Brief and issue an Order finding that the Company's method of calculating WNAR adjustments

should be used until the matter can be revisited in the Company's next general rate case proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served on Staff and the Office of the Public Counsel, on this 29th day of January 2019 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

/s/ Michael C. Pendergast