

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Laclede Gas Company’s) File No. GR-2017-0215
Request to Its Revenues for Gas Service) Tariff No. YG-2017-0195

In the Matter of Laclede Gas Company d/b/a) File No. GR-2017-0216
Missouri Gas Energy’s Request to Increase) Tariff No. YG-2017-0196
Its Revenues for Gas Service)

COMMENTS REGARDING REHEARING NOTICE

COMES NOW Spire Missouri Inc. (hereinafter, “Spire Missouri” or the “Company”) and respectfully submits these comments regarding the “Notice on Application for Rehearing” filed herein on March 19, 2018 (the “Notice”) by Midwest Energy Consumers Group (“MECG”), Missouri Industrial Energy Consumers (“MIEC”), Consumers Council of Missouri (“CCM”), the City of St. Joseph, and the Office of the Public Counsel (“OPC”) (collectively, the “Joint Filers”). In this regard, Spire Missouri states as follows:

1. The Commission issued an initial Report and Order herein on February 21, 2018, to be effective March 3, 2018. Spire Missouri and the Joint Filers sought rehearing of this initial Report and Order, and Spire Missouri and the Staff of the Commission sought clarification regarding the initial Report and Order.

2. On March 7, 2018, the Commission issued an Amended Report and Order, which superseded the initial Report and Order. All rehearing applications filed with regard to the initial Report and Order were rendered moot when the Commission issued its Amended Report and Order. In the Amended Report and Order, the Commission noted that the “amended report and order will be given a ten-day effective date to allow an opportunity for parties to file an application for rehearing.” Spire Missouri timely filed for rehearing regarding the Amended Report and Order. The Amended Report and Order took effect on March 17, 2018.

3. In the Notice, the Joint Filers purport to exercise a right under RSMo. §386.500 to challenge certain aspects of the Amended Report and Order and, thereby, provide the Joint Filers with the opportunity to subsequently appeal the Commission's decisions as set forth in the Amended Report and Order. Section 386.500 provides, in part, as follows:

1. After an order or decision has been made by the commission, the public counsel or any corporation or person or public utility interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, and the commission shall grant and hold such rehearing, if in its judgment sufficient reason therefor be made to appear; if a rehearing shall be granted the same shall be determined by the commission within thirty days after the same shall be finally submitted.

2. No cause or action arising out of any order or decision of the commission shall accrue in any court to any corporation or the public counsel or person or public utility unless that party shall have made, before the effective date of such order or decision, application to the commission for a rehearing. Such application shall set forth specifically the ground or grounds on which the applicant considers said order or decision to be unlawful, unjust or unreasonable. The applicant shall not in any court urge or rely on any ground not so set forth in its application for rehearing.

4. Pursuant to RSMo. §386.500.1, an application for rehearing must be filed *after* the issuance by the Commission of the order being challenged in order to confer jurisdiction on any reviewing court. This is a statutory requirement which cannot be waived or varied by the Commission. As such, the application for rehearing filed by the Joint Filers on March 2 (regarding the initial Report and Order) cannot apply to the Amended Report and Order issued by the Commission on March 7, 2018.

5. Also, pursuant to RSMo. §386.500.2, an application for rehearing must be filed with the Commission *before* the effective date of the order being challenged in order to confer jurisdiction on any reviewing court. *State ex rel. Office of Public Counsel v. Public Service Commission*, 236 S.W.3d 632, 636 (Mo. 2007); *State ex rel. Alton Railroad Co. v. Public Service Commission*, 155 S.W.2d 149, 154 (Mo. 1941). Because the Amended Report and Order became

effective on March 17, the Notice submitted on March 19 clearly fails to satisfy this statutory prerequisite. The failure to seek rehearing prior to the effective date of the Amended Report and Order cannot be cured simply by converting the title of the pleading from an untimely “Application” to a “Notice.” This is a statutory requirement which cannot be waived or varied by the Commission.

6. The Joint Filers’ application for rehearing regarding the initial Report and Order was rendered moot when the Commission issued its Amended Report and Order, and the Joint Filers’ “Notice” regarding the Amended Report and Order fails to confer on the Joint Filers the subsequent right to appeal the Commission’s decision. Should the Commission nevertheless determine that it is appropriate to consider the Joint Filers’ submission, the Company believes it should be allowed to respond. Accordingly, the Company provides below its provisional response to the Joint Filers’ arguments.

7. The Joint Filers first assert that the Commission erred in its Report and Order by using Spire Missouri’s actual capital structure rather than its parent company’s capital structure. In support of that claim, the Joint Filers erroneously assert that the Company’s equity component includes goodwill from the MGE acquisition which, it argues, is contrary to (1) the Stipulation in Case No. GM-2013-0254; (2) the decisions of a vast majority of state utility commissions; and (3) the Commission’s duty, as part of the Department of Economic Development, to consider the impacts of its decision on the state economy.

8. Most of these assertions are redundant and have already been debunked by the evidence. Simple math demonstrates that the MGE acquisition could not possibly have increased the equity component of the Company’s capital structure since the acquisition was financed with a greater amount of debt than equity. If anything, that means that the MGE acquisition caused the

Company's equity percentage to be smaller than it would have otherwise been. And as the Commission observed in the Amended Report and Order, not a dime of the MGE acquisition premium or goodwill has been included in the Company's rate base or cost of service. The fact is that the capital structure approved by the Commission is fully consistent with the capital structure historically used by the Company and approved by the Commission for more than a decade, and is fully in line with the capital structures of the Company's peer utilities. This fact was even confirmed by OPC/MIEC witness Gorman.

9. Joint Filers have also recycled the equally flawed assertion that many other regulatory commissions support the proposed goodwill adjustment, an argument that was addressed in Spire Missouri's brief. It is sufficient to reiterate here that this listing of cases simply establishes that the substantial majority of regulatory commissions have *not* adopted such an adjustment, that a significant plurality of the cited cases arose in Illinois, where such treatment is only one element of a "formula rates" framework that the Joint Filers would never support, and that a number of the cited cases did not even stand for the asserted proposition (e.g. applied to goodwill advertising not a goodwill asset).

10. The Joint Filers assertion that the Commission has failed to consider the state's economy in deciding the capital structure issue is especially ludicrous. Even if this was a legitimate consideration, addressing the impact based solely on this one issue is inappropriate. While the Joint Filers assert that \$19 million will be extracted from the Missouri economy, they make no mention that nearly \$70 million in cost of service reductions resulted from Spire's acquisition and integration efforts. Nor do they mention that over \$30 million in post true-up tax reductions will be flowed through to customers. Nor that customers will receive \$54 million in gas cost savings over the next 12 years as a result of the Company's St. Peters lateral project. In

the end, four years after the Company's last general rate case, customers will have lower rates than are in effect today. The overwhelming and undisputed benefits the Company has brought to the state's economy render the Joint Filers' focus on one item myopic and misplaced.

11. It is absurd for the industrial customers represented by MIEC and MECG to argue that financial benefits from a reasonable capital structure decision will flow to shareholders outside Missouri, when they themselves have shareholders, and even owners, in foreign states and countries. While Spire Missouri, a company based in Missouri, is flowing back millions in TCJA tax reductions to its Missouri customers, where are MIEC and MECG members' tax benefits going?

12. The Joint Filers' assertion that they were not accorded appropriate due process during the February 5, 2018 evidentiary hearing in these cases is simply wrong. A review of the record of that proceeding shows that the Company introduced absolutely no new substantive evidence on the capital structure issue, or any other issue for that matter. Instead, the Company simply summarized in a few instances the evidence that was already on the record on these issues in an effort to explain the conditions that would make it possible for the Company to flow through to its customers over \$30 million in post true-up tax reductions.

13. To the contrary, it was the Joint Filers, not the Company, that used the February 5, 2018 hearing to run roughshod over the Company's due process rights. The Company disclosed its position in its January 22 affidavit, well in advance of the February 5 hearing. In contrast, MIEC, MECG, Consumers Council, and OPC waited until the day of the hearing to introduce their ADIT calculations, amortization recommendations, partial agreements and other critical factual information on the tax issue, choosing in the process to simply ignore the Commission's directive

that responses to the Company's affidavit be submitted by January 25. The Joint Filers are the infringing parties here, not the Company.

14. In conclusion, Spire Missouri respectfully requests that the Commission accept these comments, treat the Joint Filers' application for rehearing of the initial Report and Order as moot and disregard the Joint Filers' Notice. In the event that the Commission does consider the Joint Filers' application for rehearing of the superseded initial Report and Order, Spire Missouri respectfully requests that the Commission deny that application.

Respectfully submitted,

/s/ Rick E. Zucker

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ATTORNEYS FOR SPIRE MISSOURI INC.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the parties of record in this case on this 28th day of March, 2018 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

/s/Marcia Spangler