

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

In the Matter of Spire Missouri, Inc.’s d/b/a)	
Spire Request for Authority to Implement a)	
General Rate Increase for Natural Gas)	Case No. GR-2021-0108
Service Provided in the Company’s)	
Missouri Service Areas.)	

**SPIRE’S APPLICATION FOR REHEARING, MOTION FOR RECONSIDERATION
AND MOTION FOR EXPEDITED TREATMENT**

Pursuant to Commission Rule 20 CSR 4240-2.160 and Mo. Rev. Stat. 386.500, Spire Missouri Inc. d/b/a Spire (“Spire” or “Company”) files this *Application for Rehearing and Motion for Reconsideration* (collectively hereafter “Application”) of the Missouri Public Service Commission’s (“Commission”) October 27, 2021 Report and Order (the “Order”) in the above referenced matter and its *Motion for Expedited Treatment* of its Application. In support of its Application and Motion for Expedited Treatment, Spire states as follows:

I. INTRODUCTION

1. On December 11, 2020, the Company filed tariffs to initiate this general rate case at the Commission.
2. On October 27, 2021, the Commission issued the Order, which was intended to resolve the nine issues that were presented during the evidentiary hearing in this case. The Commission had previously approved four separate Stipulation and Agreements resolving 45 issues.
3. On October 29, 2021, Spire filed a Motion for Clarification and Expedited Treatment (“Motion for Clarification”) requesting clarification on only two of the nine issues left to be decided after the evidentiary hearing: (1) capitalized overheads and (2) short-term debt.

4. On November 2, 2021, the Office of the Public Counsel (“OPC”) and Staff of the Commission (“Staff”) filed Responses to Spire’s Motion for Clarification. *See* OPC’s Response to Motion for Clarification and Expedited Treatment (“OPC’s Response to Spire’s Motion for Clarification”) and Staff’s Response to Spire’s Motion for Clarification.

5. On November 3, 2021, the Commission issued an Order Providing Clarification to Report and Order and Delegating Authority (“Order Providing Clarification”).

6. This Application focuses only on the Commission’s ordered treatment of non-operational overhead costs on a going-forward basis. Absent reconsideration, further clarification and/or rehearing, the Commission’s decisions on this issue will have severe ramifications for Spire, its customers, and Missouri utility regulation generally.

LEGAL STANDARD

7. Commission decisions must be lawful (*i.e.*, the Commission must possess the statutory authority to do what it did) and must be reasonable. *State ex rel. Atmos Energy Corp. v. Pub. Serv. Comm’n*, 103 S.W.3d 753, 759 (Mo. banc 2003); *State ex rel. Alma Tele. Co. v. Pub. Serv. Comm’n*, 40 S.W.3d 381, 387-88 (Mo. App. W.D. 2001). A decision by the Commission is reasonable only if supported by competent and substantial evidence of record. *Alma*, 40 S.W.3d at 388. Moreover, to withstand scrutiny, Commission decisions must not be arbitrary, capricious, or unreasonable. Mo. Rev. Stat. 536.140.1(6). The Commission is a creature of statute and it has only the powers conferred on it by the Legislature. *State ex rel. City of St. Louis v. Pub. Serv. Comm’n*, 73 S.W.2d 393, 399 (Mo. banc 1934).

8. Under *Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 288, 88 L. Ed. 333 (1944), “the fixing of ‘just and reasonable’ rates, involves a balancing of the investor and the consumer interests.” The “investor interest has a legitimate concern with the

financial integrity of the company whose rates are being regulated.” *Id.* “From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business.” *Id.*

9. “Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.” *Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 690, 43 S. Ct. 675, 678, 67 L. Ed. 1176 (1923).

10. A public utility is entitled to recover from ratepayers all its cost, plus a reasonable return on its investments, by way of rates that are just and reasonable. *Spire Missouri, Inc. v. Public Service Commission (Sup. 2021)* 618 S.W.3d 225. Mo. Rev. Stat. 386.500.1 provides that the Commission shall grant rehearing “if in its judgment sufficient reason be made to appear.”

II. APPLICATION FOR REHEARING

11. Spire has limited this Application to the most critical issue with the Order: capitalization of overheads.

12. The Commission’s decision that the Company must cease capitalizing its overhead costs going forward until Staff can determine Spire’s compliance with the FERC Uniform System of Accounts (“USOA”) is unlawful, unreasonable and unjust in light of the above legal precedent. It is particularly unreasonable for the Commission to penalize Spire for continuing to capitalize overheads using the same procedures it has followed for decades. The process utilized by Spire in this case is no different from that employed during the test year of the Company’s last general rate case, in which its capitalization methodology was upheld. No party has contested the prudence of

these costs. Ordering the Company to cease capitalization of overheads going forward, without a mechanism to adequately recover its cost of service, is unlawful, unreasonable and unjust.

13. No party has argued that the Company's capitalized overhead expenditures in this case were imprudent. Nevertheless, pages 75 and 76 of the Order contain unjust, unreasonable, unsupported, and unwarranted determinations relating to the Commission's decision that Spire must cease capitalizing its non-operational overheads on a going forward basis. The Commission should reconsider this decision, because it will prevent the Company from recovering its actual cost of service going forward by (1) suspending the Company's ability to capitalize overheads until some unknown time when Staff can determine that Spire is in compliance with the USOA capitalized overhead requirements, (2) with no corresponding expense adjustment. While the Company has always been open to reforming its overhead capitalization process, this decision by the Commission improperly penalizes the Company while also violating bedrock ratemaking principles.

14. Spire sought clarification on whether or not an adjustment should be made to allow the Company the ability to recover via expense costs of service that would normally be capitalized. In the Order Providing Clarification the Commission stated:

“The Commission ordered Spire Missouri to cease capitalizing non-operational overhead costs going forward. The Commission intends Spire Missouri plant additions to not include costs associated with non-operational overheads, going forward from the effective date of Spire Missouri's new rates as authorized by the *Report and Order*. . . ” Order Providing Clarification at p. 2.

15. This decision has punitive financial implications for Spire going forward. Staff acknowledges this in their Response to the Company's Motion for Clarification: “[t]his negative impact results from the fact that Spire's rates will be based on an approach of capitalizing overheads while its books going forward will reflect ongoing expensing treatment of overheads

for a period of time, *thus reducing net income*¹. The prospective impact of the Commission’s Order on this point thus serves as an incentive for Spire to adjust its overhead accounting procedures to be consistent with the USOA as quickly as possible.” Staff’s Response to Motion for Clarification at paragraph 5 [emphasis added].

16. Stated differently, the Commission’s decision on this issue will prevent Spire from earning a fair return for its investors for an unknown period of time. This is precisely the type of decisional impact that violates *Hope* and *Bluefield* doctrine, *supra*.

17. To some extent, the effects of the Commission’s order are already being felt by Spire. Per Wells Fargo Securities’ Utility and Infrastructure Team, the Commission’s decision on this issue presents “an unquantified EPS risk assuming the costs cannot be deferred.” *See* attached Ex. 1 at 1. Combined with the Commission’s decision on short term debt, Wells Fargo’s conclusion is that these events serve to “undermine investors’ confidence in the MO regulatory environment.” *Id.*

18. Similarly, Bank of America’s Global Research Team found the Commission’s decision and clarification on these matters to be “disappointing” and noted that the Order’s treatment of overheads will create a drag on earnings. *See* attached Ex. 2 at 1. Bank of America speculated that the Commission’s Order may drive agencies to lower Spire’s credit rating which would impact its ability to borrow at favorable rates. *Id.* at 2. In other words, this decision may make Spire’s financing costs more expensive for customers going forward.

19. The key takeaways from the industry’s early reports are that the Commission’s decision is eroding investor confidence in both Spire and Missouri utility regulatory environment.

¹ Net income is another name for profit.

Ironically, the borrowing cost impact of any credit downgrade will be exacerbated by the Commission's decision regarding capital structure, which will also increase financing costs for Spire customers.

Spire's Rates Must Be Reasonable Going Forward

20. The historic test year is used for the purpose of setting rates on a prospective basis. “Past expenses are used as a basis for determining what rate is reasonable to be charged in the future in order to avoid further excess profits or future losses. . . .” *Spire Mo., Inc. v. Pub. Serv. Comm'n*, 618 S.W.3d 225, 232 (Mo. 2021), quoting *State ex rel. Utility Consumers Council, Inc. v. Public Service Com.*, 585 S.W.2d 41, 58-59 (Mo. banc 1979).

21. The Commission's website explains the “two-step” ratemaking process, with the first step being a determination of the revenue requirement which focuses on four factors: (1) the company's reasonable and prudent operating expenses; (2) the total investment or “rate base” upon which a return may be earned; (3) the accumulated and on-going depreciation of plant and equipment; and (4) the “rate of return” or profit the utility has an opportunity to earn. The second step is to design rates that will collect that revenue requirement from the utility's customer classes (i.e., residential, commercial, industrial). The Order violates those factors in reaching its decision on the Company's revenue requirement.

22. If Spire is ordered to not capitalize overheads, those costs must instead be treated as expenses and a reasonable amount of which must be added to Spire's annual revenue requirement in order to make a reasonable approximation of Spire's expenses on a going forward basis. Failure to include revenues for the purposes of recovering such prudent and reasonable expenses would guarantee that Spire would not have an opportunity to earn a reasonable rate of return on its investment.

23. No party submitted evidence that the costs associated with the Company's overheads were imprudent or unrecoverable. Staff and OPC—the only opponents on this issue—only argued that these costs should not be capitalized. *See* Staff's Initial Brief, p. 32. Importantly, both Staff and OPC stated that if costs are not capitalized, they should be included as expenses.

24. Staff witness Matt Young testified that if the Commission ordered Spire to stop capitalizing overheads, that the expense should be included in the revenue requirement. Tr. Vol. 10, pp. 146-147, lns. 16-9.

25. OPC witness Robert Schallenberg also testified in Surrebuttal Testimony that any improperly capitalized costs should instead be expensed. Exhibit 205, Schallenberg Surrebuttal, p. 27.

26. The Commission's decision on this issue adopts the position of no party. It muddles two separate issues—the first being the Commission's authority to disallow use of capitalization of overheads until Spire and the parties come to agreement on USOA issues, and the second being whether Spire should be allowed any recovery of prudent expenditures going forward. Again, no party disputes the reasonableness of Spire's overhead costs, so there is no argument that Spire should not be allowed to recover for those types of costs by some means. While the Commission is within its authority to close one avenue of recovery, it cannot completely disallow recovery of prudently incurred costs altogether.

27. Put another way, if Spire had never capitalized these costs and only expensed them as noncapitalized costs, Spire would be allowed to recover them because they are still prudent expenditures. But here, Spire has been ordered not to capitalize these costs (recover them as part of rate base), but it is also being told that it cannot recover them through expense (even though they are prudent costs) because there is no corresponding adjustment to the revenue requirement

to approximate the amount of these expenditures going forward. Such a conclusion is unjust and unreasonable and violates the general tenets of *Hope* and *Bluefield*. It also violates the specific instruction of the Missouri Supreme Court in *Spire Mo., Inc., supra*.

28. Staff argues that the “duration and extent of Spire’s ‘hit’ on earnings as a result of this issue will be directly tied to the level of cooperation Spire will be able to provide to the parties in addressing the USOA issues,” meaning that Staff views this Order as a punitive measure meant to encourage Spire’s participation in the USOA audit required by the Order. Staff’s Response to Spire’s Motion for Clarification, p. 2.

29. To the extent the Commission means to encourage Spire’s participation in resolving USOA issues, disallowing capitalization is incentive enough given that moving overhead costs to non-capitalized expenditures is disadvantageous to Spire. Further, the Commission has tools in its arsenal to achieve these means without disrupting established ratemaking precedent. For example, the Commission could order compliance within a certain time frame or open an investigatory docket to monitor progress. Instead, the Commission’s decision disrupts previously approved practice with little guidance as to what may be sufficient to convince Staff of compliance with USOA or what duration it may take to achieve agreement on an already contested issue.

30. In the meantime, Spire is left to move forward with rates that are not just and reasonable, do not approximate its cost of service, and do not provide a reasonable opportunity for a fair return. The collateral damage of this decision is already being noted by third party analysts, including regulatory reputational risk, as cited above.

31. Additionally, the Commission’s decision impedes the Company’s ability to make reasonable business decisions or plan for the future. At the outset of this case, Spire had intended to wait several years before filing another general rate case. Now, however, Spire will be forced

to immediately file a new rate case to achieve recovery of overhead costs that were previously capitalized, but which are now neither capitalized nor included in rate expense. This is a poor use of the Commission's, Staff's, OPC's, and intervenors' time and resources. A new case is likely to result in further rate hikes for customers, at no fault of the Company, since Spire will not be able to claim tax benefits on overheads that reduce overall rates to customers, and newly non-capitalized expenses flow straight to revenue requirement.

32. No party to this case advocated for the Commission's ordered solution to this problem. The Commission's Order is plainly unfair, unreasonable, and unjust to Spire and its customers.

33. The Commission's decision does not result in just and reasonable rates because the rates set in this case do not approximate Spire's cost of service going forward. Spire therefore respectfully requests that this issue be reheard or reconsidered, and that the Commission's orders regarding this issue be nullified.

USOA Protocols

34. The Commission's Order found that Spire's long-standing practice for capitalizing its overheads was not in compliance with the Uniform System of Accounts. Order at p. 75. The Order appears to assume, without justification, that Staff's allegation that studies are required by the USOA Gas Plant Instruction 4 B is accurate. It is not.

35. Staff, without support in the applicable USOA provisions, alleges that studies are required by the USOA Gas Plant Instruction 4 B. (Staff's Initial Brief, p. 40). As acknowledged by Staff witness Young, while USOA Gas Plant Instruction 4 B identifies direct time reporting and special studies as permitted, what the USOA prohibits is found in the last sentence of USOA Gas Plant Instruction 4 B -- the use of "arbitrary percentages or amounts." Tr. Vol. X, p. 148 This

sentence of the USOA does not specify a particular method or approach that is arbitrary. It can be assumed, therefore, that this requirement may be addressed in various ways.

36. The underlying and fundamental approaches used by Spire to capitalize overheads is consistent with the practice it has used for decades. Ex. 16 (Krick Rebuttal), p. 10. Spire's long-standing practice meets the aims of USOA, Generally Accepted Accounting Principles ("GAAP"), and Financial Accounting Standards Board directives to adhere to principles of consistency, which limit management's ability to manipulate financial statements by inconsistently applying or changing certain policies. Ex. 16 (Krick Rebuttal), p. 11. Additionally, the Commission is allowed to deviate from the USOA pursuant to Commission Rule 20 CSR 4240-40.040.

III. MOTION FOR EXPEDITED TREATMENT

37. Given the immediate need for the Commission to implement appropriate rates, the Company to file compliance tariffs, and for the Company to mitigate any negative financial implications associated with the Commission's decision regarding the capitalization of overheads on a going forward basis, there is good cause to consider this Motion on an expedited basis. The Company respectfully requests that the Commission respond as soon as possible, but no later than November 12, 2021.

38. There will be no negative impact on customers or the general public if the Commission reconsiders its Order on an expedited basis. Accordingly, there is good cause for the Commission to approve this request for expedited treatment.

39. This pleading was filed as soon as it could have been following the issuance of the Commission's October 27, 2021 Order and the Commission's November 3, 2021 Order Providing Clarification to Report and Order and Delegating Authority.

IV. CONCLUSION

40. WHEREFORE, Spire respectfully requests that the Commission grant rehearing or reconsideration of the issues identified herein on an expedited basis, but no later than November 12, 2021 and, upon rehearing or reconsideration, revise its Order consistent with the recommendations set forth above.

Dated: November 5, 2021

/s/Goldie T. Bockstruck

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**ATTORNEYS FOR SPIRE MISSOURI
INC.**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served electronically, or hand-delivered, or via First Class United States Mail, postage prepaid, on all parties of record herein on this 5th day of November, 2021.

/s/ Lew Keathley