MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN THE MATTER OF THE APPLICATION OF SPIRE MISSOURI, INC., TO CHANGE ITS INFRASTRUCTURE SYSTEM REPLACEMENT SURCHARGE IN ITS SPIRE MISSOURI EAST SERVICE TERRITORY; IN THE MATTER OF THE APPLICATION OF SPIRE MISSOURI, INC., TO CHANGE ITS INFRASTRUCTURE SYSTEM REPLACEMENT SURCHARGE IN ITS SPIRE MISSOURI WEST SERVICE TERRITORY,

Appellant-Respondent,

v.

MISSOURI PUBLIC SERVICE COMMISSION,

Respondent,

MISSOURI OFFICE OF PUBLIC COUNSEL,

Respondent-Appellant.

DOCKET NUMBER WD83159
(Consolidated with WD83162)

Date: September 1, 2020

Appeal from:

Public Service Commission

Appellate Judges:

Division Four: Cynthia L. Martin, C.J., and Alok Ahuja and Thomas N. Chapman, JJ.

Attorneys:

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John A. Clizer, Jefferson City, MO, for Respondent-Appellant Office of the Public Counsel.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

IN THE MATTER OF THE APPLICATION OF SPIRE MISSOURI, INC., TO CHANGE ITS INFRASTRUCTURE SYSTEM REPLACEMENT SURCHARGE IN ITS SPIRE MISSOURI EAST SERVICE TERRITORY; IN THE MATTER OF THE APPLICATION OF SPIRE MISSOURI, INC., TO CHANGE ITS INFRASTRUCTURE SYSTEM REPLACEMENT SURCHARGE IN ITS SPIRE MISSOURI WEST SERVICE TERRITORY, Appellant-Respondent,
v.
MISSOURI PUBLIC SERVICE COMMISSION, Respondent,
MISSOURI OFFICE OF PUBLIC COUNSEL, Respondent-Appellant.

WD83159 (Consolidated with WD83162) Public Service Commission

Before Division Four Judges: Cynthia L. Martin, C.J., and Alok Ahuja and Thomas N. Chapman, JJ.

On January 14, 2019, Spire filed applications with the Public Service Commission in which it requested an increase in the Infrastructure Surcharge it was permitted to charge customers, to reflect the cost of pipeline replacement projects it had conducted in its East and West service territories between October 2017 and January 2019.

The Commission granted Spire's applications in large measure. It found, however, that it had no jurisdiction to address part of Spire's applications because the applications concerned costs which were the subject of a pending appeal in this Court. The Commission also found that certain of Spire's claimed costs were not eligible to be included in an Infrastructure Surcharge, because they related to Spire's replacement of plastic piping which was not worn out or deteriorated.

Spire appeals. The Office of Public Counsel cross-appeals, arguing that the Commission's Report and Order allows Spire to include certain ineligible costs in its Infrastructure Surcharge.

AFFIRMED.

Division Four holds:

Spire concedes that, for neighborhood-wide projects in which it replaced all of the existing piping, it was only entitled to include in its Infrastructure Surcharge costs related to the replacement of worn out or deteriorated cast-iron or steel pipe, but not the costs of replacing plastic piping. Spire submitted cost studies to the PSC which showed that, in many projects, there was no incremental cost associated with replacing the plastic piping as part of a neighborhood-wide project. Spire contends that, in those cases, it was entitled to recover the entire cost of the neighborhood-wide project in its Infrastructure Surcharge. The Commission instead held that it was appropriate to allocate the costs of the neighborhood-wide project to the deteriorated metal piping, and to the plastic piping, based on the relative length of the pipe of each type which was replaced.

The Commission's rejection of Spire's incremental-cost approach, and its adoption of a percentage-of-total-length approach, fell within its authority under the relevant statutes. The Infrastructure Surcharge statutes refer only to the recovery of certain "costs," without defining "costs" or specifying a method for calculating them. The approach adopted by the Commission is a permissible interpretation of the governing statutes.

Contrary to Spire's argument, the Commission did not in a prior proceeding hold that it would accept incremental-cost studies from Spire. Instead, in that earlier proceeding, the Commission stated that Spire's incremental-cost studies were "irrelevant" to the cost-allocation issues in an Infrastructure Surcharge proceeding.

We need not decide whether the Commission correctly held that it had no jurisdiction to consider part of Spire's current surcharge request. The Commission had previously addressed those costs using the same percentage methodology which it applied in this case, which we have upheld. Even if the Commission had authority to reconsider the earlier costs, the result would be the same.

We reject the Office of Public Counsel's claim in its cross-appeal that the Commission inappropriately permitted Spire to recover certain costs incurred under blanket work orders. The Commission made clear that the only costs of plastic piping for which it permitted recovery, were those associated with leak repairs. Public Counsel concedes that such leak-repair costs are surcharge-eligible.

Opinion by: Alok Ahuja, Judge September 1, 2020

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