Summary of SC97834, *Spire Missouri, Inc., f/k/a Laclede Gas Company v. Public Service Commission of the State of Missouri and Office of Public Counsel*
Appeal from the Missouri Public Service Commission
Argued and submitted January 29, 2020; opinion issued February 9, 2021

Attorneys: Spire was represented by Jeremiah W. (Jay) Nixon, Gabriel E. Gore and John J. Rehmann II of Dowd Bennett LLP in St. Louis, (314) 889-7300; Michael Pendergast of Fischer & Dority PC in St. Charles, (314) 288-8723; and Rick Zucker of Zucker Law LLC in Chesterfield, (314) 575-5557. The public service commission was represented by Jennifer Leigh Heintz and Shelley E. Brueegemann of the commission in Jefferson City, (573) 751-8377. The office of public counsel was represented by Lera Shemwell of the office in Jefferson City, (573) 751-5565.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A gas utility company appeals from a public service commission decision establishing new rates for two of the utility's service areas. In a unanimous decision written by Judge Paul C. Wilson, the Supreme Court of Missouri affirms in part and reverses in part the commission's decision and remands the case for further proceedings consistent with this opinion. The commission did not err in excluding a portion of the company's rate case expenses or in using relocation proceeds to reduce rates, nor was its consideration of the sale of certain property arbitrary, capricious or an abuse of discretion. The commission's calculation of the company's pension asset, however, was not supported by competent and substantial evidence.

Facts: In 2017, Spire Missouri Inc. filed tariffs with the public service commission to implement general rate increases for the gas services it provides in its eastern and western areas of the state. Prior to filing the tariffs, Spire sold its Forest Park service facility, using the proceeds to lease two new offices in downtown St. Louis and establish a new satellite office. Spire did not seek the commission's authorization before selling the Forest Park property. In March 2018, the commission issued an amended report and order establishing new rates for Spire's eastern and western service areas. In its order, the commission found Spire's shareholders should share 50 percent of the rate case expenses with the remainder of expenses allocated to the ratepayers. The commission further determined the rates should be offset by $3.6 million to account for the expense of Spire's new satellite office and Spire's prepaid pension asset is worth approximately $131.4 million, amortized over an eight-year period. Spire appeals.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Court en banc holds: (1) The commission did not err by excluding a portion of Spire's rate case expenses. The expenses sought – including a working capital study, a costly expert witness and several shareholder-oriented ratemaking strategies – were entitled to a presumption of prudence. Nevertheless, in setting a rate that is just and reasonable, the commission has broad discretion to include and exclude expenditures. The commission identified the expenses Spire incurred that benefitted only its shareholders and determined the proportion of the total case those expenses

represented. Nothing requires the commission to conduct an item-by-item analysis when the issue is the degree to which a utility's case expenses should be included in calculating just and reasonable rates.

(2) The commission did not engage in retroactive ratemaking when it ordered that approximately $3.6 million in relocation proceeds relating to the sale of the Forest Park property be used to reduce rates. The prohibition on retroactive ratemaking does not bar all references to events occurring outside the test year. There is no evidence the commission set Spire's new rates to account for profits or losses resulting from prior rates; instead, the commission found it was necessary to consider the impact of the sale of the Forest Park property in determining a just and reasonable rate.

(3) Even if the commission's decision departed from its prior practice, that alone does not mean the decision was arbitrary and capricious. An administrative agency is not bound by stare decisis, nor are the commission's decisions binding on this Court. Because the commission's decision reflects a reasoned, careful approach to ensure a just and reasonable rate, its consideration of the Forest Park property sale was not arbitrary, capricious or an abuse of discretion.

(4) The commission's calculation of Spire's pension asset was not supported by competent and substantial evidence. While there was evidence in the record that the pension asset was calculated using the cash basis method in 1990 and 1992, the uncontroverted evidence is that specific financial accounting standard valuation methods were used in the 1994 and 1996 rate cases. The amended report and order, therefore, is vacated to the extent it calculates the pension asset, and the matter is remanded for the commission to add the $9 million in pension assets that accrued between 1994 and 1996.