BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Office of the Public Counsel,	)	
	)	
Complainant,	)	
	)	
v.	)	**Case No. GC-2016-0297**
	)	
Laclede Gas Company, and Missouri Gas Energy,	)	
	)	
Respondents.	)	

ANSWER TO COMPLAINT
AND RESPONSE TO MOTION FOR EXPEDITED TREATMENT

COME NOW Respondents Laclede Gas Company ("Laclede" or "Company"), including its Laclede Gas (herein so called) operating unit, and Missouri Gas Energy ("MGE"), and files this Answer to the Complaint filed by the Office of the Public Counsel ("OPC") in this case on April 26, 2016. In support thereof, Laclede states as follows:

Contemporaneously herewith, Respondents have filed a Motion to Dismiss the Complaint. This Answer is in the alternative, and is being filed in the event the Motion to Dismiss is not granted. This Answer should not be interpreted as waiving any requests for relief in the Motion to Dismiss.

1. With respect to paragraph 1, Respondents deny the allegation to the extent it attempts to explain why OPC filed the Complaint. Respondents aver that OPC filed the Complaint to accommodate the opponents of certain proposed legislation favored by Respondents. Respondents' assertion is supported by the timing of the filing along with the apparent haste and the lack of due diligence with which it was filed. In other words, rather than taking time to determine whether there were facts supporting a claim that Respondents' rates were unreasonable, OPC simply wanted to have a complaint case on file.

2. Respondents admit the factual allegations in paragraph 2. The statutes cited by Complainant speak for themselves.

3. Respondents admit the factual allegations in paragraph 3. The statutes cited by Complainant speak for themselves.

4. Respondents admit the allegations in paragraph 4.

5. Respondents admit the allegation in paragraph 5, with clarifications. Respondents first heard allegations of over earning from a member of the General Assembly, not the Complainant. Respondents' representative then contacted Complainant on April 13th to investigate. Despite two meetings, several calls and multiple emails, it wasn't until 4:15pm on April 26th that Complainant made Respondents' representative aware that Complainant intended to file an earnings complaint. The Complaint was filed at 4:30pm.

6. With respect to paragraph 6, Respondents acknowledge the jurisdiction of the Commission in this matter. Complainant erred in citing Section 393.260 in support thereof.

7. There are no factual allegations in paragraph 7 that require a response. Section 393.130.1 speaks for itself.

8. There are no factual allegations in paragraph 8 that require a response. Section 386.390.1 speaks for itself.

9. There are no factual allegations in paragraph 9 that require a response. Complainant copied a portion of Commission Rule 2.070 into paragraph 9. The rule speaks for itself.

10. Respondents admit the allegations in paragraph 10.

11. Respondents admit the allegations in paragraph 11, except that it is more accurate to state that the gas rates were approved by the Commission, rather than established.

12. Respondents admit the allegations in paragraph 12, but it is more accurate to say that MGE's 2014 rate case was resolved in the same manner as Laclede Gas' 2013 rate case, that is, by including MGE's then current ISRS revenues in base rates.

13. There are no factual allegations in paragraph 13 that require a response. The statutes and case law cited therein speak for themselves. However, Respondents add that Complainant erred in citing Section 393.150.2, which pertains to company rate cases.

14. There are no factual allegations in paragraph 14 that require a response. The cases cited therein speak for themselves. See page 9 of Respondents' Motion to Dismiss for additional case cites on the topic of return on equity (ROE).

15. There are no factual allegations in paragraph 15 that require a response. The case cited by Complainant speaks for itself. ROE is certainly a component involved in rate setting. To the extent a response is required, Respondents deny any allegation not expressly admitted herein.

16. To the extent Complainant alleges that Laclede Gas' current rates are not just and reasonable, Respondent Laclede Gas denies the allegations in paragraph 16.

17. Respondents deny the allegations in paragraph 17.

18. Respondents admit that the January 2016 Regulatory Research Associates (RRA) *Regulatory Focus* showed an average ROE for gas utilities of 9.60%. Respondents deny that their fiscal 2015 financial results reflect an ROE of 10.45% for their operating divisions.

Complainant attempted to arrive at the ROE by dividing net income by shareholder's equity. However, Complainant purposely mismatched fiscal 2015 income against the year ended 2014 equity, in order to arrive at an artificially inflated ROE of 10.45%. (See Attachment 1) Respondents allege that the mismatch was done on purpose because two experienced regulatory

auditors, Charles Hyneman and Greg Meyer, have been involved in preparing this Complaint. Both of those auditors know, or should know, that a September 30, 2015 ROE is calculated by dividing fiscal 2015 net income by September 30, 2015 equity. At the very least, Complainant should have used average equity over fiscal 2015 as the denominator.

The one figure that is clearly inappropriate in determining 2015 ROE is the equity amount for the end of fiscal 2014. Since income causes equity to increase, ROE is artificially inflated when income earned in FY 2015 is divided by a 2014 Equity amount that by definition *excludes* that very income. To illustrate, one basketball player on the court is one-fifth, or 20% of his team. It would be inaccurate to divide that player by the number of players on the court before he arrives and claim that he is one-fourth, or 25% of the team. In the basketball example, dividing an amount by a total that doesn't include that amount increased the percentage a full 5%. In Respondent's case, the 10.45% (105.3/1007.8) using 2015 income/2014 equity becomes 10.15% (105.3/1037.8) when 2015 income is matched against 2015 equity. By using the wrong equity figure, Complainant artificially added 30 basis points to the ROE.

Having employed an inapposite per book ROE from an SEC filing, and having misled the Commission by purposely using the wrong equity figure to calculate an ROE, and having hidden its deception by not explaining in the Complaint how it chose to (mis)calculate the ROE, Complainant now seeks to use this artifice to convince the Commission that it should not only entertain this Complaint but order Staff to further evaluate the Company's cost of service. Respondents deny that customer/taxpayer resources should be expended on such an inadequately justified endeavor.

The 10.45% ROE cited by Complainant is also misleading because Complainant failed to exclude from the income used to derive the ROE a one-time gain of $7.6 million realized by the

Company from the sale of its Forest Park properties in 2015. Notably, the existence and amount of this gain is mentioned no less than 5 times in the same SEC documents that Complainant used as the source for the ROE. Under long-standing Commission policy, gains from the sale of property are excluded for ratemaking purposes, on the theory that such gains, like losses on the sale of property, flow to shareholders rather than ratepayers. In ***Staff of the Missouri Public Service Commission v. Southwestern Bell Telephone Company,*** 1989 WL 418683 (Mo. P.S.C.), pp. 17-18, 104 P.U.R.4th 381, 29 Mo. P.S.C. (N.S.) 607 (1989), the PSC discussed its historical treatment of such gains at some length in determining that Southwestern Bell had to bear the loss from the sale of certain assets to AT&T. As the PSC observed:

> Although there has been a substantial amount of evidence on this issue related to whether SWB used the proper pricing method for setting the purchase price for the CISW, the real issue is how to treat the difference between the sale price and the booked amounts for revenue requirement purposes. SWB can no longer recover the difference from AT&T. If the difference is to be recovered in rates, it will have to be recovered from other customers.
>
> The regulatory treatment of sales of assets by utilities under the Commission's jurisdiction has been addressed in other cases. ***Re Missouri Cities Water Co***., 29 Mo PSC NS 178 (1987); ***Re Missouri Cities Water Co***., 26 Mo PSC NS 1 (1983); ***Re Associated Nat. Gas Co***., 26 Mo PSC NS 237, 55 PUR4th 702 (1983); Re ***Kansas City Power & Light Co.***, 21 Mo PSC NS 843 (1972). Even though the Commission has indicated in these cases that a showing of the gain on the sale of utility property used in provision of service should be considered on a case by case basis, the Commission has consistently treated the gain below the line. This is true whether the property was land or depreciable property. In the latest Missouri Water Company case, the Commission held that there was little difference between contributed property and depreciable property and the ratepayer, in each case, had only a reasonable expectation of service and not an interest in the property. ***Re Missouri Cities Water Co., 29 Mo PSC NS at 183. The Commission*** cited ***Reinhold v. Fee Fee Trunk Sewer, Inc***., 664 S.W.2d 599 (Mo.App.1984) to support this decision.
>
> The Commission has determined the sale of the CISW to AT&T comes within the reasoning of the cases cited above. Any loss or gain from the sale is to be treated below the line. In addition, the customers who used the CISW can no longer be charged and it is not reasonable to charge the other ratepayers for these costs. The Commission gave SWB an opportunity to recover through amortization the costs

> associated with CISW. SWB decided instead to sell the CISW to AT&T at less than book and so it should absorb the difference between the sale price and the unamortized amounts on its books.

Complainant is fully aware of this long-standing policy. In fact, in a recent Empire rate case proceeding, Complainant not only recognized the existence of this policy but affirmatively "urge[d] the Commission to continue with its general policy of accruing the gain or loss on dispositions of plant assets to the owners of the assets – utility shareholders." ***Re: Empire District Electric Company***, Case No. EC-2016-0023, Surrebuttal Testimony of Charles R. Hyneman, p. 23. In support of its position, OPC even went so far as to note that Laclede had followed this very policy in connection with the gains from its Forest Park property, citing the same SEC documents that OPC has relied upon as the basis for its Complaint.

Given this background, Complainant's failure to exclude this one-time $7.6 million gain from the income it used to calculate the ROE in its Complaint is simply inexcusable. Correcting for this obvious error as well as for the egregious mismatch between the income and equity discussed above, results in an ROE of 9.69%. Notably, this ROE – again calculated based on the very source documents that OPC used to arrive at its figure – is *lower* than the ROE specified for ISRS purposes in Laclede's last rate case and within 9 basis points of the 2015 national average ROE alleged by Complainant. If anything, these corrected figures affirmatively substantiate the reasonableness and lawfulness of Laclede's existing rates and charges. They clearly provide no basis for an allegation that Laclede is overearning and that a complaint to that effect should be entertained by the Commission.

19. Respondents have not reviewed the March 2016 RRA Report referenced, but have reviewed RRA's summary points for these two cases and they appear to be consistent. The Report will speak for itself.

20. With respect to paragraph 20, Respondents deny that it is in the rate paying public's best interest for the Commission to evaluate the company's cost of service and revenue requirement at this time. As noted in our Motion to Dismiss, complaint cases require a significant amount of time, effort and cost that are ultimately borne by customers, so before engaging in such a significant undertaking, it should be incumbent upon the Complainant to assemble sufficient facts before asserting a claim that rates are unjust or unreasonable. Respondents already provide monthly financial reports to Staff and OPC, and provide quarterly surveillance reports, both of which would allow Staff and OPC to evaluate the Company's financial condition. Instead of reviewing or evaluating those reports for regulatory purposes, Complainant has attempted to use an inapposite and unadjusted per book ROE filed with the SEC to evaluate the Company. As further answer, Respondents incorporate the response to paragraph 18 herein.

Respondents also deny the allegation in paragraph 20 that it should be required to track, defer and record all revenues[1] that exceed a 9.6% ROE. There is no need for Respondents to specially track and record revenues because it already prepares monthly financial statements and quarterly surveillance reports as discussed above. There is also no purpose to deferring such revenues unless Complainant is suggesting that the Commission engage in unlawful retroactive ratemaking. For an entity that that has been so vigilant in opposing any hint of retroactive ratemaking, OPC cavalierly and openly suggests it in paragraph 20. As the Commission reaffirmed in the recent excess earnings complaint brought against Ameren Missouri, however, the practice of setting future rates to adjust for past earning levels is condemned as retroactive ratemaking that would deprive either the utility or its customers of their property without due

[1] Respondent assumes Complainant means earnings, as revenues themselves are not reflective of equity returns. For purposes of this answer, however, Respondents will use Complainant's chosen verbiage.

process. ***State ex rel. Util. Consumers Council of Mo, Inc. v. Pub. Serv. Comm'n,*** 585 S.W.2d 41, 58 (Mo. banc 1979). Respondent denies OPC's allegation that the Commission should engage in such unlawful retroactive ratemaking.

21. To the extent Complainant alleges that Respondent MGE's current rates are not just and reasonable, Respondent MGE denies the allegations in paragraph 21.

22. Respondent MGE denies the allegations in paragraph 22 that MGE's fiscal 2015 ROE significantly exceeds what state utility commissions awarded gas companies in 2015. Respondent MGE admits that the January 2016 Regulatory Research Associates (RRA) *Regulatory Focus* showed an average ROE for gas utilities of 9.60%. Respondent MGE denies that it filed an annual report with the SEC, denies that it has earned an ROE of 10.45%, and denies that it operates the Laclede division. Respondent MGE incorporates herein the response to paragraphs 18.

23. With respect to paragraph 23, Respondents have not reviewed the March 2016 RRA Report referenced, but have reviewed RRA's summary points for these two cases and they appear to be consistent. The Report will speak for itself. Respondent MGE denies that it is in the rate paying public's best interest for the Commission to evaluate the company's cost of service and revenue requirement at this time. Respondent MGE incorporates herein the remainder of the response herein to paragraphs 20 stating that the Commission should not engage in unlawful retroactive ratemaking.

RESPONSE TO MOTION FOR EXPEDITED TREATMENT

24. Respondents move to strike the allegations in paragraphs 24-29 as irrelevant and superfluous. Revenues from approved ISRS rates charged to customers are already included in Laclede's financial statements. There is no need to treat those revenues as different from other

revenues from approved rates. Further, since the ISRS Statutes provide for reconciliations after rate cases or complaint cases, there is no need to expedite this case.

Respondents admit the allegations in paragraph 24 that, since their current ISRS rates were established, ISRS charges have totaled in the millions of dollars for their more than 1.1 million customers. Respondents also aver that, since their last rate case, customers have benefited from significant safety improvements from pipeline replacements, which required the Respondents to first invest hundreds of millions of dollars. Respondents only begin the long process of recovery for those investments after they are reviewed and approved by the Commission, per the statutorily authorized ISRS process.

25. There are no factual allegations in paragraph 25 that require a response. The ISRS statutes and rules speak for themselves. To the extent a response is required, Respondents state that Complainant's recitation of ISRS requirements is roughly accurate.

26. There are no factual allegations in paragraph 26 that require a response. The ISRS statutes and regulations speak for themselves. To the extent a response is required, Respondents state that Complainant's recitation of ISRS requirements is roughly accurate.

27. With respect to paragraph 27, Respondents admit that Complainant has appealed a Commission decision permitting updates during ISRS cases.

28. With respect to paragraph 28, Respondents admit that they had open ISRS cases at the Commission at the time the Complaint was filed. Those cases are in the process of being closed.

29. Respondents deny the allegations in paragraph 29.

30. Respondents deny that Complainant has shown good cause to expedite this case. As indicated below, Complainant has not specifically identified what it means by

expedited treatment. The request for expedited treatment is flawed in several respects, as follows:

A. It does not comply with Commission Rule 2.080(14).

   i. The words "Motion for Expedited Treatment" are not in the title of the pleading;

   ii. It does not provide a date by which Complainant desires the Commission to act;

   iii. It does not include a statement regarding whether or not there will be a negative effect on customers or the public if the Commission acts as requested;

   iv. It does not address whether or not the pleading was filed as soon as it could have been filed.

B. It does not provide good cause for expedited treatment.

   i. Complainant claims that the case should be expedited because Respondents' alleged unjust rates are "so significant." This claim is contradicted by the Complainant's own allegation that the Respondents are earning an ROE of 10.45%, or only 0.85% above Complainant's alleged average ROE amount of 9.6%. If the Commission issued an order today allowing the Company to earn 10.45% on its equity, a court would not be able to overturn the Commission's decision because 10.45% is within the 1% "zone of reasonableness" ordered by the United States Supreme Court. Since the rate alleged by Complainant is within the zone of reasonableness, it cannot be considered unjust or unreasonable.

ii. As a basis for expedited treatment, Complainant claims that it has appealed a Commission decision allowing "true-ups" and other adjustments. The issue appealed by Complainant is merely an update of proforma estimates of ISRS costs for plant that is already serving customers. The fact that the matter is on appeal has no bearing on the merits of expedited treatment. Complainant does not identify the "other adjustments," and why they require the Commission to expedite review of the Complaint. However, in the Commission case under appeal, the "other adjustments" were *decreases* to ISRS revenues, which decreases were approved by the Commission. This certainly does not provide good cause for expedited treatment.

31. In conclusion, Laclede and MGE respectfully request that the Commission find that Complainant has failed to show good cause for expedited treatment, as argued herein.

32. Respondents hereby deny all allegations in the Complaint not otherwise admitted herein.

Respectfully Submitted,

/s/ Rick Zucker

Rick Zucker, Mo. Bar #49211
Associate General Counsel - Regulatory
Missouri Gas Energy
700 Market Street, 6th Floor
St. Louis, MO 63101
Telephone: (314) 342-0532
Fax: (314) 421-1979
Email: rick.zucker@spireenergy.com

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 31st day of May, 2016 by United States mail, hand-delivery, email, or facsimile.

/s/ Rick Zucker

ATTACHMENT 1

Laclede Gas Company's First Set of Data Requests
To the Office of the Public Counsel
Case No. GC-2016-0297

DR 0001

With reference to the Complaint filed by the Office of Public Counsel ("OPC"), in Numbered Paragraph 18, it states, "In its fiscal year 2015 Annual Report filed with the SEC, Laclede's financial results reflect ROE of 10.45% for its Laclede and MGE operating divisions."

a. Please provide a detailed calculation showing how the 10.45% was calculated, including reference to the specific page, line, and column of the annual report that was used for each number input into the numerator and denominator.

The calculation is Net Income divided by Beginning Shareholder Equity. See Laclede's Group's ("Laclede") 2015 SEC Form 10K page 33 which reflects Laclede Gas' Net Income for 2015 at $105.3 million. Also see 10-K page 63 reflecting Laclede Gas's Income Statement reflecting 2015 net income of $105.3 million. The SEC Form 10-K does not have line numbers or column designations. Beginning Common Stock Equity for the period is reflected in Laclede Gas Company balance sheet as the ending Common Stock Equity for 2014 of $1007.8 million. This amount can be found on the 2015 10-K at page 63. Laclede Gas' actual earned ROE for 2015 of 10.45% is calculates as $105.3/$1007.8 = 10.45%.

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LACLEDE GAS COMPANY

STATEMENTS OF CAPITALIZATION

(Dollars in Millions, Except Per Share Amounts)

September 30	**2015**	**2014**
Common Stock Equity:		
Common stock, par value $1 per share:		
Authorized – 50,000,000 shares		
Outstanding – 24,577 shares	0.1	0.1
Paid-in capital	748.2	744.0
Retained earnings	291.2	265.6
Accumulated other comprehensive loss	(1.7)	(1.9)
Total Common Stock Equity	1,037.8	1,007.8
Long-Term Debt:		
First Mortgage Bonds:		
2.0% Series, due August 15, 2018	100.0	100.0
5.5% Series, due May 1, 2019	50.0	50.0
3.0% Series, due March 15, 2023	55.0	55.0
3.4% Series, due August 15, 2023	250.0	250.0
3.4% Series, due March 15, 2028	45.0	45.0
7.0% Series, due June 1, 2029	25.0	25.0
7.9% Series, due September 15, 2030	30.0	30.0
6.0% Series, due May 1, 2034	100.0	100.0
6.15% Series, due June 1, 2036	55.0	55.0
4.625% Series, due August 15, 2043	100.0	100.0
Total	810.0	810.0
Unamortized discount, net of premium, on long-term debt	(1.9)	(2.1)
Total Long-Term Debt	808.1	807.9
Total Capitalization	$ 1,845.9	$ 1,815.7

See the accompanying Notes to Financial Statements.