

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

In the Matter of the Application of)
Laclede Gas Company to Change its)
Infrastructure System Replacement) Case No. GO-2016-0332
Surcharge in its Missouri Gas)
Energy Service Territory)

In the Matter of the Application of)
Laclede Gas Company to Change its)
Infrastructure System Replacement) Case No. GO-2016-0333
Surcharge in its Laclede Gas Service)
Territory)

OPC RESPONSE REGARDING MOTIONS TO STRIKE

COMES NOW the Office of the Public Counsel (“OPC”) and for its Response to Laclede’s Motion to Strike and Response to Laclede’s Response to OPC’s Motion to Strike, and states as follows:

1. Laclede’s Motion to Strike OPC’s brief regarding whether hydrostatic testing is a capital or expense item is based upon the false premise that OPC raised the argument. In fact, it was Laclede and the Staff that raised the capitalization issue making the issue ripe for discussion and determination as the Commission clearly did during its last Agenda Meeting.

2. Laclede’s last-ditch effort to reargue this issue is nothing more than an impermissible attempt to file a reply brief on the hydrostatic testing issue now that Laclede realizes it met neither its burden of proof nor its burden of persuasion with the Commission.

3. Since only capitalized costs are permitted in the Infrastructure System Replacement Surcharge (“ISRS”), Laclede should not be permitted to claim surprise that this issue was discussed, especially since *Laclede is the party that first raised the argument* during the evidentiary hearing; not OPC. This issue was first raised by Laclede’s counsel, Mr. Zucker. During opening remarks, Mr. Zucker made the statement, “*Everything in the ISRS is capital. If it’s an expense item, an O&M item, it doesn’t go into the ISRS.*”¹ To which Chairman Hall asked a follow up question:

CHAIRMAN HALL: And hydraulic testing is a capital item?

MR. ZUCKER: Hydrostatic testing is a capital item when done in this manner.²

Mr. Zucker went on at length arguing that the type of hydrostatic testing done in this case is to be capitalized.³ Laclede now falsely claims it was “ambushed” by OPC on this issue but the record shows differently; that Laclede brought this to the Commission to argue that its hydrostatic test costs were eligible under the ISRS *because* Laclede claims they should be capitalized. Laclede’s Motion to Strike is simply trying to change the Commission’s determination on an issue the Commission clearly considered and found Laclede’s arguments to not be persuasive.

¹ Transcript (Tr) p. 23.

² *Id.*

³ *Id.*

OPC's brief addressing this argument was wholly proper. The only thing improper is Laclede's Motion to Strike, which is in reality an unauthorized reply brief.

4. Laclede raised the capitalization issue again during re-direct examination of its witness Mr. Lauber regarding hydrostatic testing on a transmission line:

Mr. Zucker: Okay. And is it capitalized with the cost of the pipeline?

Mr. Lauber: Yes, it is.⁴

The purpose of this question and this answer was to characterize the hydrostatic testing costs as proper because Laclede capitalizes these costs. The evidence deduced during the hearing, as OPC explained in its brief, show these costs should not be capitalized, which is consistent with the Uniform System of Accounts ("USOA") adopted by the Commission and as interpreted by the Federal Energy Regulatory Commission ("FERC").

5. Staff witness, Mr. Oligschlaeger also raised the capitalization issue in his rebuttal testimony when he provided the *only* Staff testimony on hydrostatic testing:

Q. What is Staff's position on this matter?

A. Hydrostatic testing costs have been allowed in several past MGE ISRS applications. Such costs are clearly safety-related in nature. Further, Staff's understanding is that Federal Energy Regulation Commission ("FERC") accounting guidelines allow for capitalization of hydrostatic testing costs in

⁴ Tr. 146-147.

certain circumstances. Staff recommends that these costs continue to receive recovery through the ISRS rate mechanism.⁵

Here the Staff, just like Laclede, raised the capitalization issue to argue the hydrostatic testing costs included in the ISRS were proper. Again, OPC did not raise this issue as Laclede argues, but did respond to it with evidence clearly showing hydrostatic testing costs are not to be capitalized. The fact that these tests should be expensed and recovered through base rates, as the Commission recognized during its Agenda Meeting, is relevant to the hydrostatic test issue and was properly raised during the hearing and in OPC's brief.

6. Laclede was provided a full opportunity to address this issue and did so in its post-hearing brief where Laclede included a section titled "Capital vs. Expense." Laclede addressed this issue for seven pages in its brief. Laclede had a full opportunity to convince the Commission of its position but it was unsuccessful as Laclede's position runs contrary to the clear language of the USOA and orders issued by the FERC.

7 If Laclede was unprepared to address this issue that responsibility lies solely on Laclede, not OPC and not the Commission. OPC properly responded to the testimony evidence of Mr. Oligschlaeger, to the testimony evidence of Mr. Lauber, and to the opening statement remarks made by Laclede's counsel.

8. Laclede also responded to OPC's Motion to Strike, but offers no argument that provides reason to overrule OPC's motion. First, Laclede never

⁵ Oligschlaeger Rebuttal Testimony, p. 11.

offered the cited briefs into evidence nor did Laclede ask the Commission to take official notice of those documents, thereby depriving OPC of the ability to respond. Second, Laclede cites to no argument where OPC made the assertion it must raise issues or request a hearing within 60 days from the day the petition is filed.

WHEREFORE, the Office of the Public Counsel respectfully offers this response to Laclede's Motion to Strike and Response to OPC's Motion to Strike and urges the Commission to deny the motion.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston
Marc D. Poston (#45722)
Chief Deputy Counsel
P. O. Box 2230
Jefferson City MO 65102
(573) 751-5558
(573) 751-5562 FAX
marc.poston@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 17th day of January 2017.

/s/ Marc Poston
