

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

In the Matter of Laclede Gas Company's )	
Application to Establish Depreciation )	Case No. GO-2012-0363
Rates for Enterprise Computer Software )	
Systems. )	

**PUBLIC COUNSEL'S REPLY TO LACLEDE GAS  
COMPANY'S RESPONSE TO THE OFFICE OF THE PUBLIC  
COUNSEL'S MOTION FOR SUMMARY DETERMINATION**

**COMES NOW** the Missouri Office of the Public Counsel (OPC) and for its Reply to Laclede Gas Company's Response to the Office of the Public Counsel's Motion for Summary Determination, states:

1. On June 13, 2012, OPC filed its Motion for Summary Determination ("Motion") and its Suggestions in Support of its Motion for Summary Determination ("Suggestions"). OPC's Motion asks the Commission to deny Laclede's Application to establish new depreciation rates for newly acquired software "until Laclede has conducted a full depreciation study that supports the requested changes, as determined by the Commission in the context of a general rate case." OPC's Suggestions explained why the Commission should deny the Application:

a. Laclede's Application seeks to avoid filing a new depreciation study to support the requested changes until the year 2015, allowing any errors in setting the rate to continue for years until a depreciation study is filed.

b. If a future depreciation study indicates the depreciation rate should have stayed at 20% instead of the requested 5%, Laclede will have forced future ratepayers to pay for plant that should have already depreciated.

c. Laclede's Application seeks to slow the rate of depreciation to allow Laclede to depreciate less of the new investment, which will leave more of the investment to be included in future rates causing future rates to be higher than they would without the depreciation rate change. This is harmful to consumers.

d. Laclede has not submitted competent and substantial evidence in the form of a depreciation study to support the requested change.

e. A full depreciation study will ensure that all depreciation rates are set appropriately, rather than decreasing a depreciation rate while not knowing whether other depreciation rates should also be adjusted.

f. Denying the Application would be consistent with the Commission's decision in Case Number ER-2008-0318 (and the Staff's position in that case) finding depreciation rate adjustments should not be made without the benefit of a full depreciation study. The Commission found such adjustments to be "closely analogous to the larger concept of single issue ratemaking."

OPC's purpose in repeating the arguments made in its Suggestions is to help the Commission recognize the arguments to which Laclede was responding, rather than Laclede's incorrect characterization of OPC's arguments.

2. Laclede's first response misstates OPC's Motion and Suggestions when it states that OPC's theory for relief is that Laclede's Application constitutes single issue ratemaking. As shown the recitation of OPC's argument in Paragraph 1 above, OPC raised several reasons to reject the Application, and the Commission's prior finding that depreciation adjustments are analogous to single issue ratemaking was the last point raised by OPC. OPC concedes to Laclede's point that Laclede's Application does not

seek a rate increase as that term is used in 4 CSR 240-2.117(1)(A), and therefore summary determination is not precluded in this case.

3. Laclede's second point is that summary determination should "be denied simply because the premise of the motion is false." Laclede does not follow-up this claim with an explanation as to why it believes "the premise of the motion is false," and therefore OPC cannot respond to this claim.

4. Laclede next argues that summary determination is premature under Rule 4 CSR 240-2.117(1)(A), which states:

(A) Except in a case seeking a rate increase or which is subject to an operation of law date, any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than sixty (60) days prior to the hearing except by leave of the commission.

OPC agrees with Laclede that there is no named respondent in this case, and therefore, basing the timing of OPC's Motion on a responsive pleading is inapplicable. However, the second part of the rule, allowing summary determination motions to be filed "at any time after the close of the intervention period" is also inapplicable because the Commission never established an intervention period. According to 4 CSR 240-2.075, the intervention period is "thirty (30) days after the commission issues its order giving notice of the case, unless otherwise ordered by the Commission." The Commission never issued notice in the case, and therefore did not trigger the intervention period. OPC does not believe the rules are meant to prohibit a party from filing a motion for summary determination in instances where there is no respondent and where the Commission does

not trigger the intervention period. The rules are meant to simply establish a meaningful time for filing such motion.

5. The date OPC chose to file its Motion was appropriate for several reasons. **First**, at the time OPC filed its Motion, OPC was already attempting to accommodate Laclede's desire for an expedited procedural schedule and an August evidentiary hearing. The parties ultimately agreed to an expedited August 16, 2012 hearing date. According to the summary determination rule, 4 CSR 240-2.117(1)(A), "a motion for summary determination shall not be filed less than sixty (60) days prior to the hearing except by leave of the commission." To meet a filing deadline of sixty days prior to August 16, 2012, OPC would have had to file its Motion no later than June 15, 2012. OPC filed on June 13, 2012, only two days prior. If OPC had waited and filed its Motion 30 days after Laclede filed its Application on May 18, 2012, as Laclede suggests, OPC would not have been able to satisfy the requirement that such motions cannot be filed less than sixty (60) days prior to the hearing. **Second**, Laclede initiated this case on May 4, 2012 when it filed Laclede's Notice of Intended Case Filing and Request for Waiver of 60 Day Notice Before Filing. OPC filed its Motion forty (40) days after Laclede initiated this case, and any interested party had time to intervene. **Third**, as stated above, the Commission never issued a notice in this case and therefore did not trigger the intervention period. The intent of the rules would be maintained by accepting OPC's Motion as appropriately filed, or at a minimum, by granting OPC a waiver of the rule for good cause, as permitted by 4 CSR 240-2.015. **Fourth**, OPC did not object to Laclede's request to waive the sixty (60) day notice requirement despite the fact that waiving the rule meant the protections provided by the rule were lost. Accepting OPC's filing as timely filed, on the other hand,

would not in any way compromise the protections provided by the summary determination rule.

6. Laclede argues that OPC's Motion "did not set forth any facts" as required by 4 CSR 240-2.117(1)(B), which states in part, "Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue." Despite Laclede's false assertion, OPC's Motion states the following as facts:

- That Laclede filed an Application to establish new depreciation rates.
- That Laclede seeks to change the current 20% rate for computer software to a new 5% rate for certain computer software.
- Laclede's Application is not supported by a depreciation study.
- The change would allow Laclede to depreciate less of its investment before the investment is recovered in rates.

These are all of the facts needed to support OPC's Motion, and these are all the facts OPC needed to state to comply with 4 CSR 240-2.117(1)(B).

7. Laclede next argues that summary disposition is inappropriate because there are genuine issues of material fact. Laclede argues that there is a material factual dispute over whether Laclede seeks a new rate or a change to an existing rate. This argument is misleading because it attempts to create a factual dispute where no dispute exists simply by mischaracterizing what Laclede's Application seeks to do. There is no dispute that the current depreciation rate for *all computer software* is 20%. That is an undisputed fact. It is also a fact that once Laclede purchases the new software, it would automatically need to apply this 20% depreciation rate ordered by the Commission for

computer software. This is why Laclede filed the Application – to change the rate for the new computer software before it makes the purchase. Laclede argues that its purchase of new software to replace old software should establish a new class of plant never before depreciated by Laclede simply because the software is more advanced (Is not all new software more advanced over prior software?). These differences in characterizing what Laclede’s Application seeks is not a factual dispute, rather, it’s a disagreement over what fact is more relevant – the fact that the computer software does new things, or the fact that the new computer software simply replaces old computer software.

8. Laclede also argues that “there are genuine issues of material fact regarding the circumstances prevailing in the Ameren case versus those prevailing in this case.” Laclede raised this issue in response to OPC’s argument that denying Laclede’s Application would be consistent with a prior Ameren case. OPC raised this issue to bring the Commission’s attention to the Commission’s prior conclusion that changing a depreciation rate without a depreciation study is analogous to single issue ratemaking. Whether Laclede’s Application would also be analogous to single issue ratemaking is a legal question, not a genuine factual dispute.

9. The “facts” that Laclede claims are in dispute include Laclede’s claim that the Ameren case “would have had an immediate impact on rates in that case” whereas the present Application would not. OPC does not disagree with the fact that the Ameren case involved a rate case where new consumer rates were being set, whereas Laclede’s Application seeks to change depreciation rates, and not the tariffed rates paid by ratepayers for service. Laclede’s Response does not specifically identify any other

alleged “fact” that is in dispute. Accordingly, there are no factual disputes regarding the applicability of the Ameren decision to Laclede’s Application.

10. Laclede’s Response attempts to address other factual differences between the Ameren case and the present Application by referencing the Direct Testimony of Laclede witness Mr. Glenn Buck. The only additional fact addressed in Mr. Buck’s testimony is Mr. Buck’s claim that “there is simply no factual basis that would support applying the existing 20% depreciation rate for computer software” to Laclede’s new computer software. Laclede fails to recognize that there does not need to be a factual basis established in this case for the 20% depreciation rate for software because 20% is the Commission-ordered depreciation rate based upon facts established by Laclede’s depreciation study filed in its last rate case. It is currently the one and only lawful depreciation rate for computer software, and additional facts are unnecessary to apply that 20% rate to Laclede’s new software.

11. Laclede’s next argument is that “as a matter of law, the Commission is not prohibited from” changing a depreciation rate “outside the context of a rate case.” Laclede cites to several examples that it claims support Laclede’s legal interpretation. First, Laclede cites to Case No. GR-98-374, wherein the Commission approved depreciation rates to be effective a few months prior to the effective date of a rate case. The depreciation solution in Case Number GR-98-374, however, came from a Stipulation and Agreement wherein all parties agreed to specific depreciation rates in a comprehensive resolution of a number of issues in that case. The present case, on the other hand, is not a general rate case and there is no party agreement on depreciation.

12. Second, Laclede cites to Case Number GR-2005-0284 for its claim that the Commission has approved depreciation rates to be effective months after the effective date of a rate case order. The case cited involved a general rate case and a unanimous stipulation resolving all issues in the case, which included an agreed upon depreciation schedule. The change did not occur outside of a rate case as Laclede has proposed here.

13. Third, Laclede cites to Case Numbers GO-81-62 and GR-99-315 for Laclede's claim that in prior cases the Commission has "approved or considered changes in depreciation rates in proceedings held between rate cases." Case Number GO-81-62 is distinguishable from the present case because that 1981 case considered depreciation outside of a rate case in that the parties to the rate case (Case Number GR-80-173) agreed to separately determine the depreciation issues following the rate case rather than allow that one issue to hold up an agreement to resolve the rate case. Case Number GR-99-315 is distinguishable from the present case because the issues of net salvage and depreciation were *not* considered outside a general rate case in that Case Number GR-99-315 was a Laclede general rate case. The issues of net salvage and depreciation were reversed by the Circuit Court of Cole County and remanded back to the Commission. Because of the reversal, the net salvage and depreciation issues were not resolved at the same time as the other issues in the case. These facts are very different from the present facts, and the facts established from the pleadings in the present case show this case is not similar to a remand following a reversal on review.

14. The fourth and last case cited by Laclede to support its claim that the Commission has in the past altered Laclede's depreciation rates outside of a general rate case is *State of Missouri ex rel. Public Counsel v. Public Service Commission*, 858



S.W.2d 806 (Mo. Ct. App. W.D. 1993). The 1993 case was a request by Missouri Public Service Company (MPS) for an accounting authority order (AAO) authorizing the company “to defer and record depreciation expenses and carrying costs pertaining to two construction projects.” The MPS case is distinguishable from the present Laclede Application because the MPS case was an AAO request, whereas in the present case, Laclede has not requested an AAO. The request in the MPS case, to defer and record an expense, is a completely different request from that made in Laclede’s Application, which is to change an existing depreciation rate for new computer software.

15. Laclede also claims that the Commission has twice recently “approved new depreciation rates for new items in proceedings outside of rate cases.” First, Laclede cites to Case Number GE-2010-0030, *In the Matter of Missouri Gas Energy’s Application for Waiver Concerning Commission Rule 4 CSR 240-3.235*. In GE-2010-0030, MGE petitioned the Commission to waive Rule 4 CSR 240-3.235, which requires utilities to submit a depreciation study with a rate case. Arguing that MGE should be required to submit a depreciation study with the rate case MGE had recently filed in Case Number GR-99-315, the Staff stated:

When there are potentially significant changes or offsetting changes in various depreciable plant accounts, it is important, if not essential, for any utility company seeking a rate increase to submit a current depreciation study so the Commission may consider these changes prior to ordering any changes in depreciation rates.<sup>1</sup>

Ultimately, MGE, Staff and OPC all agreed that the Commission should grant the waiver subject to several conditions proposed by the Staff. One of Staff’s conditions was for

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<sup>1</sup> Case Number GE-2010-0030, Staff Response to Missouri Gas Energy’s Application for Waiver from the Requirements of Commission Rule 4 CSR 240-3.235, or in the Alternative, Motion to Dismiss Rate case, filed July 31, 2009, p. 2.

MGE to establish a new depreciation subaccount for the purchase of cars and small trucks that was not part of the depreciation study filed in MGE's last rate case, which included only a depreciation rate applicable to large trucks. The parties did not dispute the fact that the new depreciation rate was for a new investment that did not fit into any existing account, unlike this case where there is an existing account for all computer software.

16. Lastly, Laclede attempts to provide the Commission with assurances that the parties will retain all rights to challenge the changed depreciation rates in Laclede's next rate case. This "assurance" does not protect consumers in that if the changed rate is proven to be too low in the subsequent rate case, Laclede will have depreciated too little of the asset, thus forcing future ratepayers to pay more than they should. This problem will not be remedied by Laclede's "assurances" that the parties can challenge the depreciation rate in the future.

WHEREFORE, the Office of the Public Counsel respectfully requests that Laclede's Application be summarily dismissed for the reasons stated herein, in the Motion for Summary Determination, and OPC's Suggestions supporting the Motion.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 23<sup>rd</sup> day of July 2012:

**/s/ Marc Poston**

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