

**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.)	

BRIEF OF THE OFFICE OF THE PUBLIC COUNSEL

Laclede Gas Company seeks authority to change its depreciation rate for data processing software used for billing, accounting, collections, customer service, and other functions, from 20% (five year life) to 7% (15 year life). Laclede claims that the upgraded data processing software should be treated differently than the software currently performing these same functions. Granting Laclede's request would allow Laclede to slow the rate of depreciation before the software expense is included in rates, which would enable Laclede to recover millions of dollars more from future customers.

The Office of the Public Counsel urges the Commission to deny Laclede's request because it seeks to change a single depreciation rate without the evidence necessary to determine whether other offsetting depreciation rates should also be changed. Denying Laclede's request would also be consistent with the Commission's recent decision to deny a similar request to change a depreciation rate without a depreciation study, which the Commission determined was unreasonable because it was "analogous to single-issue ratemaking."¹ Without a depreciation study, the record before the Commission lacks sufficient evidence to support this multi-million dollar impact on consumers.

¹ *In the Matter of Union Electric Company d/b/a AmerenUE for Authority to File Tariffs Increasing Rates for Electric Service Provided to Customers in the Company's Missouri Service Area*, ER-2008-0318, Report and Order, January 27, 2009.

Denying Laclede's request will allow the Commission and the parties to properly address this issue in Laclede's upcoming rate case, which Laclede intends to file in three months,² where the Commission will have the benefit of a full depreciation study that analyzes all depreciation rates for adjustment. The depreciation study will provide evidence of the offsetting depreciation rate adjustments, evidence which could minimize or eliminate the impact to consumers of making a single depreciation rate change, a change that would without question increase the rates paid by consumers in the future.

Laclede's request should also be denied because it seeks to violate the terms of a Stipulation and Agreement that gave Laclede a multi-million dollar rate increase in exchange for Laclede's agreement to certain terms, including the requirement that a 20% depreciation rate be applied to computer software and computer systems.

I. BACKGROUND

Depreciation, as it relates to public utility companies, is an expense that "represents the allocation of an investment's (i.e. plant) cost over the period or life which it is used by the utility to provide service to ratepayers."³ Depreciation expense is a component of a utility company's revenue requirement (cost of service), and rates paid by consumers for gas service include the utility's depreciation expense and a return on the utility's investment.⁴ A depreciation rate is typically determined through a depreciation study, "which is a detailed and complex analysis of the historical lives of all investment utilized by the utility."⁵

² Transcript (Tr) 67.

³ Ex. 7, Robertson Rebuttal, p. 5.

⁴ *Id.*

⁵ *Id.*

Laclede's current depreciation rates were established in Laclede's most recent rate case, Case Number GR-2010-0171.⁶ The current rates are based upon Laclede's depreciation study that analyzed Laclede's historical data and records, including Laclede's historical computer software and computer system data, to determine the appropriate depreciation rates.⁷ The depreciation study is hundreds of pages long, and took approximately three to four months to complete.⁸ It supports a 20% depreciation rate for computer systems and computer software, and 20% was the rate ultimately agreed to in a Stipulation and Agreement ("Agreement") entered into by Laclede, the Commission's Staff, Public Counsel, USW Local 11-6, Missouri Industrial Energy Consumers, and the Missouri Energy Group.⁹ In exchange for receiving a \$31.4 million rate increase, Laclede agreed, among other things, that it would apply a 20% depreciation rate on all computer software and a 20% depreciation rate on all computer systems.¹⁰ The Commission approved the Agreement on August 18, 2010, and Laclede's new tariffs became effective on September 1, 2010.¹¹

On May 4, 2012, twenty months after Laclede's new rates became effective, Laclede initiated the present case seeking Commission authority to lower the agreed-upon 20% depreciation rate (five-year life) for data processing software and to instead apply a 5% depreciation rate (20-year life). Laclede later amended its request to a 7%

⁶ *In the Matter of Laclede Gas Company's Tariff to Revise Natural Gas Rate Schedules*, Case Number GR-2010-0171, Report and Order, August 18, 2010.

⁷ Tr. 40.

⁸ *Id.*

⁹ Case No. GR-2010-0171, Report and Order, incorporating the Partial Stipulation and Agreement, filed July 23, 2010. The Report and Order, p.12, incorporated the terms of the Agreement "as if fully set forth" in the Report and Order.

¹⁰ *Id.*

¹¹ *Id.*; and Order Approving Compliance Tariffs, August 23, 2010.

depreciation rate (15-year life) following the Staff's recommendation of 7%. According to Laclede, its new software purchase consists of the following:

- Oracle Enterprise Systems for accounting, reporting, payment processing and supply chain functions, which replaces Laclede's Walker financials and the MMS system used for accounts payable and materials management;
- Power Plant system for fixed asset and tax accounting, which replaces Laclede's Walker Asset Management and PCM system, used to unitize property;
- Oracle Customer Care and Billing System for billing, collections and customer service, which replaces Laclede's Customer Information System; and
- IBM Maximo system for enterprise asset management and work management, which replaces the Service Location and Leak Control systems as well as a series of Microsoft Access databases/systems.¹²

Laclede seeks to depreciate all of these separate components of its new software at the same 7% rate. Without Commission approval, Laclede would be required to book these software expenses in the existing and historical accounts for computer systems and computer software, which both require Laclede to use a 20% depreciation rate.¹³

II. ARGUMENT

The best course of action is to avoid a premature depreciation rate change and to instead address this issue after Laclede finishes the depreciation study it has already started preparing.¹⁴ Without the information provided by the study, the Commission will be unable to accurately determine the appropriate depreciation rate for the new software

¹² Exhibit (Ex.) 7, Robertson Rebuttal, pp. 11-12, quoting from Laclede's response to Public Counsel Data Request Number 9.

¹³ Tr. 103.

and all other depreciation rates that need to be adjusted. The process proposed by Laclede and the Staff, which is to change the rate now as a “placeholder” until a more in-depth analysis can be performed and filed in three months with Laclede’s rate case filing, is simply not in the public interest.¹⁵ Addressing this issue in the rate case will ensure that ratepayers will not be harmed by a premature and incorrect rate change.

1. Denying the Request is Consistent with Case No. ER-2008-0318

In Union Electric Company’s (UE) 2008 rate case, Case Number ER-2008-0318, Public Counsel retained a depreciation consultant and submitted testimony contending that the Commission should adjust downward the established depreciation rates for five specific accounts for the Callaway Nuclear Production Plant.¹⁶ The basis of Public Counsel’s position was that the depreciation rates for the Callaway plant had been “based on the assumption that the nuclear plant would have a life of 40 years, which was the length of its license from the NRC [Nuclear Regulatory Council].”¹⁷ In UE’s previous rate case, “the Commission ordered the depreciation rates regarding the Callaway plant be calculated based on a 60-year life span” under the assumption that UE would receive a 20-year license extension from the NRC.¹⁸ As a result, the actual book reserve, based on a 40-year life, became higher than the theoretical reserve, which was based on a 60-year life.¹⁹ Adjusting the depreciation rates downward, Public Counsel argued, recognized the increase in the life of the investment from 40 years to 60 years.²⁰

¹⁴ Tr. 64-65.

¹⁵ Tr. 88.

¹⁶ ER-2008-0318, Report and Order, pp. 92-93.

¹⁷ *Id.*, p. 94.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

The Staff and UE opposed Public Counsel's request, and argued that the Commission "should not "cherry pick" a few isolated accounts to adjust outside the context of a complete depreciation study, which was not conducted in this case."²¹ The Commission's Staff responded to Public Counsel's argument with the testimony evidence of Staff's witness, Mr. Guy Gilbert, who testified as follows:

Q. What is Staff's recommendation in the current case?

A. Without having conducted a depreciation study of all the accounts of AmerenUE's investment, it is premature to make any changes to depreciation. Staff is concerned that a reduction in depreciation accrual now as proposed by OPC may be premature given the risk of reducing the accrual for nuclear plant accounts now to only discover in the near future in the context of a full depreciation study that depreciation rates need to be increased.²²

According to the Staff in ER-2008-0318, analyzing only a portion of the utility company's plant accounts does not yield a complete picture of the Company's net depreciation requirements.

The Commission ultimately rejected Public Counsel's request to change depreciation rates without a depreciation study, and determined that doing so would be analogous to single issue ratemaking. The Commission stated:

Staff and AmerenUE contend no adjustment should be made at this time without the benefit of a full depreciation study. The Commission finds that Staff and AmerenUE are correct in their concern about making an isolated adjustment to a few depreciation accounts outside the context of a full depreciation study. Such an isolated adjustment is closely analogous to the larger concept of single-issue ratemaking. Just as it would be inappropriate to adjust a utility's rates based on a change to a single item without considering changes in all other items that may off-set that single item, it would be to adjust a few depreciation rates without looking at all depreciation rates in a complete study. In a complete study, depreciation rates for some accounts may increase, while others decrease. The balance of

²¹ *Id.*, p. 92.

²² Tr. 100-101.

the increases and decreases is what is important in establishing depreciation rates for the company.²³

In the instant case, Laclede is also requesting “to adjust a few depreciation rates without looking at all depreciation rates in a complete study.” As the Commission explained, balancing the depreciation rate decreases with the depreciation rate increases “is what is important in establishing depreciation rates for the company.” Granting Laclede’s Application would not allow for this balancing.

Laclede attempts to distinguish its case from the UE case when it claims that its new software is an entirely new category of expense never before seen by Laclede. The evidence, however, shows that the new software will perform functions that are currently being performed by Laclede’s existing software and/or enhancements to its software.²⁴ The evidence shows that Laclede is just upgrading its data processing systems.²⁵

2. Harmful Impacts to Ratepayers

The harm from granting Laclede’s request will occur initially because lowering a depreciation rate causes the asset to depreciate slower, which will leave a higher expense to be included in a future revenue requirement that is eventually incorporated into rates.²⁶ The long-term effect of extending the expected service life for Laclede’s computer software to 15 years is that it will increase the number of years that Laclede will earn a return on its investment. Public Counsel’s witness Mr. Ted Robertson provided a spreadsheet in his Rebuttal Testimony showing that a five-year amortization would allow Laclede to recover approximately \$81,377,880, which includes the cost of the new

²³ Case No. ER-2008-0318, Report and Order, p. 95.

²⁴ Ex. 7, Robertson Rebuttal, pp. 11-12.

²⁵ Tr. 43.

²⁶ Ex.7, Robertson Rebuttal, p. 17.

software (approximately \$60,000,000) and five years of earning a return upon that investment.²⁷ A 20-year amortization, however, would allow Laclede to recover \$134,822,580 from consumers over the life of the investment, which is an increase of \$53,444,700 over the five-year amortization.²⁸ Similarly, a 15-year amortization would also allow Laclede to recover millions of dollars above what Laclede would recover from ratepayers under a five-year life. This shows the significance of Laclede's request upon future rates, and the need to base the resolution of this issue on the best possible evidence - a fully developed depreciation study.

Approval of Laclede's request would also violate the revenue requirement matching principle, "wherein costs associated with the provision of services should match the period when those services are provided."²⁹ Mr. Robertson explained that the violation would occur because approving Laclede's request "would immediately create an imbalance in the depreciation reserve accounts before the date of the next change in service rates."³⁰ Laclede claims to have resolved this issue by agreeing to make an adjustment to the depreciation reserve in the rate case should the Commission make a change to the depreciation rate at that time. However, Mr. Robertson, the only Certified Public Accountant testifying in this case, testified that even with Laclede's commitment, the matching principle would be violated because there would still be an imbalance between the revenues Laclede is currently collecting, revenues that have a certain amount

²⁷ *Id.*, Schedule TJR-2.

²⁸ *Id.*

²⁹ Ex. 7, Robertson Rebuttal, p. 17.

³⁰ *Id.*

of depreciation built into them, in comparison to what Laclede would collect later if the authorized depreciation rate is changed.³¹

It is important to remember that when Laclede retires plant early, it continues to charge customers rates that are based upon a revenue requirement that includes a level of depreciation expense for the retired plant.³² Consumers are not granted a rate adjustment to help avoid paying for plant investments that are fully depreciated – there is no adjustment until the next rate case. Likewise, when a utility upgrades an investment in a manner that extends the useful life of the assets in an account, it should wait until the next depreciation study is filed before it recognizes that change. Keeping the status quo until a proper analysis of a depreciation study maintains a level of fairness in rate setting in that it creates no winners and no losers – it merely preserves what was proven by the last depreciation study until a new depreciation study proves otherwise.

3. Lack of Sufficient Evidence

Another reason to deny Laclede's request is that the evidence presented by Laclede and the Staff fails to provide sufficient evidence to determine that a seven-percent (7%) depreciation rate is appropriate.

A. Glenn Buck's Testimony

Only one witness filed Direct Testimony in this case – Laclede's witness Mr. Glenn Buck. Mr. Buck is not a Certified Public Accountant, nor is Mr. Buck an engineer.³³ He earned a bachelor's degree in business administration in 1984, and has been employed by Laclede since 1986.³⁴

³¹ Tr. 175.

³² Tr. 52.

³³ Tr. 56-57.

³⁴ Ex. 2, Buck Direct, pp. 1-2.

Mr. Buck first claims that the new software will bring “enhancements” to Laclede’s provision of utility service.³⁵ He identifies those enhancements as “tools to improve customer care and operate even more efficiently.”³⁶ His evidence is his general assertions that the new software will: 1) make more information available to the company’s call center personnel; 2) allow Laclede to streamline and automate business processes; and 3) allow Laclede to more rapidly access data and records. This evidence does not explain how the software is any different than the software it is replacing, other than that it benefits from better features. Since Mr. Buck has no experience outside of Laclede Gas Company, his entire basis for a 15-year life is his claim that certain components of its “core system” lasted from 15 to 25 years. This 15 to 25 years conflicts with Mr. Buck’s Surrebuttal Testimony where he states that Laclede’s payroll system, a system being replaced by the new software, is not even 10 years old.³⁷

Mr. Buck’s testimony is refuted by Public Counsel’s witness Mr. Ted Robertson, who testified that data provided by Laclede shows that most of Laclede’s information systems being replaced have been placed in service since calendar year 2000, with most of those installations occurring between 2002 and 2009.³⁸ Mr. Robertson further testified that Laclede’s new software is not a new class of software without a currently applicable depreciation rate - Laclede is only replacing its current operating systems with more advanced systems.³⁹ Improved features are to be expected from newer systems.⁴⁰ Mr.

³⁵ *Id.*, p. 3.

³⁶ *Id.*

³⁷ Ex. 3, Buck Surrebuttal, p. 4.

³⁸ Ex. 7, Robertson Rebuttal, p. 10.

³⁹ *Id.*, p. 11.

⁴⁰ *Id.*

Robertson's testimony demonstrates that each new software component is simply replacing an existing software component.⁴¹

In Mr. Buck's Surrebuttal Testimony, he states that Laclede initially chose a 20% depreciation rate "primarily because it was consistent with the depreciation rate that had just been approved by the Commission in the Missouri American Water Company case."⁴² This admission as to the source of Laclede's request is consistent with the lack of supporting evidence from Mr. Buck's testimony – it shows Laclede was primarily relying upon a prior settlement rather than hard evidence showing the expected life of the new software. Depreciation studies are proper evidence of the expected life of an asset, not prior black-box settlements involving a different public utility company. Laclede chose not to file a depreciation study, even though according to Mr. Buck, nothing prevented Laclede from filing a depreciation study with this case.⁴³

Next, Mr. Buck's Surrebuttal wrongly characterizes Mr. Robertson's Rebuttal Testimony as Public Counsel's "recommendation" and "proposal" to use a 20% depreciation rate.⁴⁴ This is a mischaracterization because Public Counsel's recommendation is to deny the Application, and wait to make changes until they are supported by a depreciation study. While this would require Laclede to apply a 20% depreciation rate, this is because it is the currently approved rate.⁴⁵

As explained above, Mr. Buck's Surrebuttal Testimony modifies his prior assertion that Laclede's "core information systems" have lasted from between 15 years

⁴¹ *Id.*

⁴² Ex. 3, Buck Surrebuttal, p. 2.

⁴³ Tr. 66.

⁴⁴ Ex. 3, Buck Surrebuttal, p. 3.

⁴⁵ Tr. 137.

and 25 years, which he now claims have lasted from almost 10 years to 25 years.⁴⁶ Mr. Buck's testimony lacks sufficient detail to enable the Commission to determine whether 15 years is an appropriate life for all new data processing system components since not all systems have lasted 15 years. On cross-examination, Mr. Buck testified that not all software has the same life expectancy, even though Laclede wants to attach a 15-year life to all new data processing system software.⁴⁷ In addition, Mr. Buck provides absolutely no information from the vendors that provided the system upgrades, such as estimates on the useful lives of their products, which is information that one would expect Laclede to request from the vendors, and information that would be helpful to the Commission in determining the expected life of the software.

Mr. Buck's Surrebuttal attempts to downplay Mr. Robertson's testimony regarding Laclede's data showing that most of the current systems were put in place since 2002. Mr. Buck does this by characterizing these as "occasional upgrades and "work-arounds" that have been made to the Company's core management systems."⁴⁸ On cross-examination, Mr. Buck characterized these work-arounds as systems that were separate and distinct, or "outside" of the core-systems.⁴⁹ Mr. Buck does not explain why the replacement software for these separate systems, systems that have not been in existence for more than 10 years, should be given a 15-year life based upon core systems that did not perform the same functions. Instead, Mr. Buck lumps these additional outside systems in with the alleged longer lives of what it refers to as the "core system." It should also be noted that Laclede provides little explanation of what is included in its

⁴⁶ Ex. 3, Buck Surrebuttal, p. 4, the "payroll system has been in service for nearly 10 years."

⁴⁷ Tr. 60-61.

⁴⁸ Ex. 3, Buck Surrebuttal, p. 5.

⁴⁹ Tr. 50.

definition of “core system” and just how much of that is being replaced by the new software upgrades. The result is a confusing mess of old systems, enhanced systems, work-around systems, and multiple software purchases meant to update these multiple systems, and Laclede’s claim that this supports a 15-year service life for all upgrades made to all components of all data processing systems. Absent a full depreciation study of all accounts and a more detailed analysis of this large investment and its individual components, Laclede’s weak and confusing evidence should not be relied upon to make a change that will result in millions of dollars in increased rates for consumers.

B. John Spanos’ Testimony

Laclede also relies upon the Surrebuttal Testimony of Mr. John Spanos, a consultant routinely hired by utility companies to represent company interests on depreciation issues.⁵⁰ Mr. Spanos is the same consultant that prepared the depreciation study for Laclede’s most recent rate case, which formed the basis for the Commission’s finding that 20% is the appropriate depreciation rate for all computer software and data processing systems.⁵¹ On cross-examination, Mr. Spanos supported his prior depreciation study as a reliable basis for setting depreciation rates.⁵²

Mr. Spanos’ Surrebuttal Testimony claims that the “most commonly utilized life” for systems similar to Laclede’s new system has been 12 to 15 years, with only a few companies utilizing 20 years.⁵³ According to Mr. Spanos, 15 years is at the *high end* of depreciation rates for most utility companies, yet Mr. Spanos recommends 15 years

⁵⁰ Ex. 1, Spanos Surrebuttal, pp. 3-5.

⁵¹ Tr. 39-40.

⁵² Tr. 41-42.

⁵³ Ex. 1, Spanos Surrebuttal, p. 8.

because he claims it is “realistic.”⁵⁴ Mr. Spanos’ short 10 pages of Surrebuttal Testimony shows that it lacks any substance to support his recommended 15 years, and only includes general assertions that 15 years is within the range of what most utilities use for similar systems. Mr. Spanos does not compare Laclede’s system to any other specific utility systems, nor does he provide any insight into why he characterizes Laclede’s system as being similar to these other unidentified systems. Nowhere does Mr. Spanos provide an explanation as to why 12 years, the low end of his range, is not more appropriate. Mr. Spanos’ fleeting and unsupported testimony should not be relied upon as sufficient evidence to justify such a significant rate-impacting change.

The evidence before the Commission does not include a depreciation study that analyzes Laclede’s current assets and books for depreciation rate adjustments. The only depreciation studies discussed during the hearing were the Laclede and Kansas City Power & Light depreciation studies, both performed by Mr. Spanos, and in both studies he recommended a 20% depreciation rate for all computer software and data processing systems.⁵⁵ This is the only evidence of a thoroughly studied rate, and it supports a decision that denies Laclede’s request to prematurely change its rate.

On redirect examination of its witness, where no party would have an opportunity to challenge his testimony, Laclede surprisingly attempted to characterize Mr. Spanos’ Surrebuttal Testimony as being equivalent to a full depreciation study.⁵⁶ This is not consistent with Mr. Spanos’ testimony where he acknowledges that he relied upon zero historical data in his analysis,⁵⁷ and it is not based upon any verifiable evidence. Even

⁵⁴ *Id.*, pp. 8-9.

⁵⁵ Tr. 42-43.

⁵⁶ Tr. 45-46.

⁵⁷ Tr. 45.

Mr. Spanos acknowledged that the results of a depreciation study are not known until the study is complete.⁵⁸ Characterizing Mr. Spanos' 10 pages of testimony, half of which explains Mr. Spanos' background, as a full blown depreciation study on any issue is simply not believable considering it takes three to four months, and hundreds of pages of analysis, to conduct a depreciation study.⁵⁹ Even if Mr. Spanos' testimony was believable, it could just as easily support a 12-year depreciation life as it could a 15-year depreciation life, since Mr. Spanos testified that most similar data processing systems depreciate for 12 to 15 years. The difference between wrongly setting the depreciation rate at 15 years when 12 years is more accurate would be significant on rate-paying consumers. Only a full depreciation study will determine whether a reasonable rate falls within Mr. Spanos' range or somewhere outside of that range.

C. Robinett Testimony

The Commission's Staff relies upon the testimony evidence of its witness Mr. John Robinett. Mr. Robinett's testimony is an unreliable basis for granting Laclede's request for several reasons. First, Mr. Robinett proposes the 7% depreciation rate as a "placeholder" until a more accurate rate is determined with the assistance of a full depreciation study.⁶⁰ Mr. Robinett testified that setting up a separate sub-account for the new software purchases will allow "the dollars for the new EIMS system to be tracked separately and analyzed as part of a future comprehensive depreciation study to determine if the correct depreciation rate has been set for this type of equipment."⁶¹ Mr. Robinett also testified that the depreciation study may support something other than a 15-

⁵⁸ Tr. 42.

⁵⁹ Tr. 40.

⁶⁰ Tr. 88.

⁶¹ Ex. 4, Robinett Rebuttal, p. 4. Emphasis added.

year life.⁶² These are acknowledgements that the evidence is insufficient to produce an accurate depreciation rate, and that a depreciation study is necessary.

Mr. Robinett also attempts to distinguish the assets booked into Account 391 by characterizing them as “desktop computers.”⁶³ However, the evidence before the Commission shows that Account 391 is not limited to desktop computers, and that it includes all computer software and data processing systems.⁶⁴ Characterizing Account 391 as including only desktop software functions is misleading.

Mr. Robinett claims to find support for his recommended 15-year service life by his review of “the FERC Form 2 for some gas companies throughout the United States,” which he reviewed to determine whether his proposed 7% rate was reasonable.⁶⁵ During cross-examination it was revealed that Mr. Robinett’s reliance upon the FERC Forms was misplaced for several reasons. For starters, the forms he reviewed were not filed by local distribution companies (LDCs) such as Laclede, rather, the forms he reviewed were from pipeline and transmission companies, which Mr. Robinett was unable to distinguish from LDCs.⁶⁶ During cross-examination it was also revealed that Mr. Robinett’s conclusion that the FERC Form 2s supported a 7% rate was based solely based upon the depreciation rate used by the pipeline and transmission companies for office furniture and equipment.⁶⁷ Mr. Robinett admitted during cross-examination that the FERC Forms did not provide sufficient detail to determine the account where they book computer software

⁶² Tr. 105-106.

⁶³ Ex. 4, Robinett Rebuttal, p. 4.

⁶⁴ Ex. 8, Robertson Surrebuttal, p. 11.

⁶⁵ Ex. 5, Robinett Surrebuttal, p. 2; Tr. 109.

⁶⁶ Tr. 92-93.

⁶⁷ Tr. 97.

and/or data processing systems.⁶⁸ In some instances, Mr. Robinett claimed that the FERC Forms supported his 7% recommendation due to a 6.67% rate that the pipeline companies used to book office furniture and equipment, despite the fact that the companies used a separate account titled “data processing/electronic testing” with a 20% depreciation rate, suggesting that Mr. Robinett’s reliance upon the office equipment account actually refutes his proposed 7% depreciation rate.⁶⁹

Mr. Robinett’s testimony should not be given weight due to Mr. Robinett’s statement that he does not have any experience with LDCs, and has worked on only one prior case involving an LDC.⁷⁰ Mr. Robinett also testified that he was unfamiliar with the prior UE decision discussed above, Case Number ER-2008-0318, a case that is significant to the issues in this case. In fact, Mr. Robinett was even unfamiliar with the testimony evidence of his boss, Mr. Gilbert, stating that making changes to depreciation rates without the benefit of a depreciation study is premature because a full depreciation study could show that other depreciation rates need to be increased.⁷¹ While Mr. Robinett’s testimony appears to be a sincere analysis of the issues, the lack of experience and support suggests that his testimony should not carry enough weight to saddle consumers with a future rate increase as a “placeholder” for a more accurate rate.

4. Missouri American Water Company Case is Irrelevant

Laclede and the Staff rely heavily upon a Stipulation and Agreement that resolved Missouri American Water Company’s (MAWC) 2011 rate case as reason to approve the relief requested in this case. In Case Number WR-2011-0337, MAWC sought to lower

⁶⁸ Tr. 98.

⁶⁹ Tr. 99.

⁷⁰ Tr. 110.

⁷¹ Tr. 101.

the depreciation rate for its new data processing system, the Business Transformation System. Unlike Laclede, however, MAWC “did not claim to the Commission that the investments it was making to its information systems were related to a new class of investment unlike the investment which they were replacing.”⁷² Public Counsel initially opposed MAWC’s proposal to delay the depreciation of its new data processing system,⁷³ but ultimately agreed to the depreciation rate change in a black-box settlement where the depreciation rate change was one issue in a settlement that resolved over twenty-three separate issues.⁷⁴ Public Counsel’s witness in the instant case, Mr. Ted Robertson, C.P.A., who also participated in Case Number WR-2011-0337, testified that “there was a lot of give and take” in the final Stipulation in that parties agreed to terms they would not otherwise agree upon in exchange for favorable treatment in other areas.⁷⁵

As is typical in black-box settlements, the parties agreed to an additional term approved by the Commission that states, “Other than explicitly provided herein, none of the Signatories shall be prejudiced or bound in any manner by the terms of this Agreement in these or any other proceeding regardless of whether this Stipulation and Agreement is approved.”⁷⁶ The Stipulation also included the following term, which was specific to the resolution of the data processing system issue, stating, “Nothing in this Agreement shall be considered a finding by the Commission or agreement of the Signatories as to the reasonableness, prudence or future regulatory ratemaking of the

⁷² Ex. 7, Robertson Rebuttal, pp. 6-7.

⁷³ Tr. 144.

⁷⁴ Ex. 10, *In the Matter of Missouri-American Water Company’s Request for Authority to Implement a General Rate Increase for Water and Sewer Service Provided in Missouri Service Areas*, Case No. WR-2011-0337, Non-Unanimous Stipulation and Agreement.

⁷⁵ Tr. 174.

⁷⁶ Ex. 10, Case No. WR-2011-0337, Non-Unanimous Stipulation and Agreement, ¶ 25.

expenditures involved.”⁷⁷ The Commission ultimately approved these terms and incorporated them into its Report and Order when it concluded that, “the Commission incorporates all provisions of the Agreement, as if fully set forth, into this order.”⁷⁸ Accordingly, the Commission may not rely upon the Stipulation to resolve the issue in the instant case.

The Staff’s reliance upon the WR-2011-0337 Stipulation to argue against Public Counsel’s position in the instant case is a direct violation of the terms of the Stipulation, signed by Staff counsel, wherein Staff agreed Public Counsel would not be prejudiced by the terms of the Stipulation in any other case. If black-box settlements that specifically prohibit the use of the agreement to prejudice a signatory party are later allowed to be used to prejudice a signatory party, it could have a devastating effect on the willingness of Public Counsel and other parties to settle cases.⁷⁹ Instead, it will force Public Counsel to take any issue to hearing that Public Counsel would not agree upon if it were a stand-alone issue. For these reasons, the black-box settlement in Case No. WR-2011-0337 is irrelevant to the resolution of the instant case, and should be disregarded by the Commission.

5. Other Past Depreciation-Related Decisions

Laclede and the Staff also rely upon a Kansas City Power & Light Company (KCPL) case, Case No. EO-2012-0340, to support their claim that the Commission has adjusted depreciation rates in the past without a depreciation study. A major difference between that case and the present case is that the KCPL case involved an entirely new

⁷⁷ Ex. 10, Case No. WR-2011-0337, Non-Unanimous Stipulation and Agreement, ¶ 19.

⁷⁸ Case No. WR-2011-0337, Order Approving Non-Unanimous Stipulation and Agreement, p. 12, March 7, 2012.

⁷⁹ Tr. 173-174.

asset in that they were seeking an account in which to record a bridge used by the railroad to service KCPL's Iatan facility because no such account existed,⁸⁰ which is unlike the present case where Account 391 exists to record depreciation for computer software and data processing systems. Another difference between the two cases is that in KCPL, the depreciation rate that was ultimately agreed upon for the bridge was based upon the depreciation rate for the Iatan facility as determined by a previously filed depreciation study,⁸¹ whereas Laclede's request is to create a new account that is not related in any way to a previous depreciation study. The facts of the KCPL case are remarkably different and the results of that case are not applicable here.

Laclede and the Staff may cite to other cases where they claim the Commission changed a depreciation rate without a depreciation study. All of the past cases that Staff and/or Laclede have raised can be distinguished from the facts of the instant case in that those prior cases were: 1) decided in the context of a rate case where Mr. Robertson's concerns regarding revenue lag were not a concern because the rate case reset the company's revenue requirement;⁸² 2) involved facts that distinguish those cases from the present case, such as a truly new category of expense;⁸³ 3) were the result of a settlement;⁸⁴ or 4) involved a request for an Accounting Authority Order (AAO), which Laclede has not requested in this case.⁸⁵

⁸⁰ *In the Matter of the Application of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company for the Issuance of a Depreciation Authority Order Relating to their Electrical Operations*, EO-2012-0340, Order Granting Application, June 27, 2012, p. 4.

⁸¹ *Id.*

⁸² See Case No. GR-99-315.

⁸³ See Case No. GE-2010-0030, which involved assets unlike those in the existing accounts.

⁸⁴ See Case Nos. GO-81-62, GR-98-374 and GR-2005-0284.

⁸⁵ See *State of Missouri ex rel. Public Counsel v. Public Service Commission*, 858 S.W.2d 806 (Mo. Ct. App. W.D. 1993).

6. Laclede's Request Seeks to Break a Previous Agreement

Laclede's request should also be denied because it seeks to violate the terms of the Stipulation and Agreement ("Stipulation") between Laclede, the Commission's Staff, Public Counsel, USW Local 11-6, Missouri Industrial Energy Consumers, and the Missouri Energy Group that settled Laclede's most recent rate case, Case Number GR-2010-0171. In exchange for receiving a \$31.4 million rate increase, Laclede agreed in the Stipulation that it would apply a 20% depreciation rate on all data processing software and a 20% depreciation rate on all data processing systems, and the Commission ordered Laclede to follow this term of the Stipulation.⁸⁶ Attachment B to the Stipulation requires Laclede to apply a 20% depreciation rate to USOA Account 391.1, "Data processing systems", and a 20% depreciation rate to USOA Account 391.3, "Data processing software."⁸⁷ Allowing Laclede to unilaterally make changes to the terms of the Stipulation is not in the public interest because it would: 1) Violate of the Stipulation; 2) Violate the Report and Order approving the Stipulation;⁸⁸ and 3) Deter Public Counsel from settling rate cases if settlement agreement terms are not enforced by the Commission. The Commission's order approving the terms of the Stipulation should be enforced until Laclede's rates have been reset in the context of a general rate increase request where a fully developed depreciation study is filed.

Laclede may argue that the Stipulation in its most recent rate case included a clause similar to the clause in the MAWC case, prohibiting a party from using the

⁸⁶ *In the Matter of Laclede Gas Company's Tariff to Revise Natural Gas Rate Schedules*, Case No. GR-2010-0171, Report and Order, issued August 18, 2010.

⁸⁷ *Id.*

⁸⁸ Section 386.490.2 RSMo states that all Commission orders shall continue in force either for a period which may be designated therein or until changed or abrogated by the Commission.

agreement to prejudice any signatory in another proceeding except as otherwise expressly specified in that agreement. The clause does not apply as suggested by Laclede because it does not prohibit Public Counsel from seeking to *enforce* the 20% depreciation rate for computer software and data processing systems because that term is expressly specified within the agreement.

7. Laclede's Depreciation Study Commitment

Laclede initially sought to delay the filing of a depreciation study until the next general rate case after it completes implementation of the new system,⁸⁹ which would have allowed Laclede to avoid a depreciation study until 2015.⁹⁰ Laclede now states that it commits to submit a depreciation study with its upcoming rate case filing. Depending upon when Laclede plans to file its rate case, Laclede may be required to submit a depreciation study anyway. Commission rule 4 CSR 240-3.235 states that any gas utility which submits a general rate increase request shall also submit a depreciation study, database and property unit catalog, unless the Commission's Staff has received these items within the last three years. The last time Laclede filed a depreciation study was with its most recent rate case, which Laclede filed on December 4, 2009.⁹¹ Any rate case filed after December 4, 2012 would require a new depreciation study. Laclede's witness Mr. Glenn Buck testified that Laclede plans to file its rate case in December of this year,⁹² and that Laclede has already retained a consultant to begin work on a depreciation

⁸⁹ Case No. GO-2012-0363, Verified Application for an Order Establishing a Depreciation Rate for the Company's New Enterprise Information Management System, May 18, 2012, p. 5.

⁹⁰ 4 CSR 240-3.235.

⁹¹ Case No. GR-2010-0171, Report and Order, issued August 18, 2010, p.3.

⁹² Tr. 67.

study.⁹³ Unless Laclede's intent has been to file its rate case during the first few days of December, the rules require Laclede to submit a depreciation study regardless of Laclede's commitment to do so.

III. CONCLUSION

In conclusion, Public Counsel urges the Commission to deny Laclede's request to change its depreciation rates for the newly acquired software, and to address this issue in the upcoming rate case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all counsel of record this 14th day of September 2012:

/s/ Marc Poston

⁹³ Tr. 64-65.