

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

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

COMPLAINT

COMES NOW the Missouri Office of the Public Counsel (“OPC”) and for its Complaint against Laclede Gas Company (“Laclede”) and Missouri Gas Energy (“MGE”) (collectively both Laclede and MGE may be referred to as “Companies”) states as follows:

INTRODUCTION

1. OPC files this Complaint to address the issue of whether the gas rates of Laclede and MGE are just and reasonable.
2. Laclede is a gas corporation subject to regulation by the Public Service Commission (“Commission”) under Section 386.020(18) RSMo 2010 Cum. Supp., Section 386.250(1) RSMo, and Section 393.140 RSMo.¹ Laclede’s business address is 700 Market Street, Saint Louis, Missouri 63101. Laclede is the largest gas distribution company in Missouri, delivering natural gas to more than 1.1 million customers.
3. MGE is a gas corporation subject to regulation by the Commission under Section 386.020(18) RSMo 2010 Cum. Supp., Section 386.250(1) RSMo, and Section

¹ All statutory references are to Missouri Revised Statutes 2000 unless otherwise noted.

393.140 RSMo. MGE is owned by Laclede whose business address is 700 Market Street, Saint Louis, Missouri 63101.

4. OPC is authorized to file complaints against public utility corporations under Section 386.390 RSMo. and 4 CSR 240-2.070. OPC's address is 200 Madison Street, Suite 650, Jefferson City, Missouri 65102.

5. Prior to this filing, representatives from OPC directly contacted a representative of Laclede about this complaint.

JURISDICTION

6. The Commission has jurisdiction of this matter under sections 393.130.1, 386.390.1, and 393.260 RSMo as well as regulation 4 CSR 240-2.070(4) and (5).

7. Section 393.130.1 RSMo provides:

Every...gas corporation...shall furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable. All charges made or demanded by any such...gas corporation ...for...gas...or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for... gas...or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.

8. Section 386.390.1 RSMo provides:

Complaint may be made by...the public counsel...by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any...public utility, including any...charge heretofore established or fixed by or for any...public utility...; provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any...gas...corporation, unless the same be signed by the public counsel.

9. Regulation 4 CSR 240-2.070(4) and (5) provides in relevant portions:

(4) Formal Complaints. A formal complaint may be made by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any person, corporation, or public utility, including any rule or charge established or fixed by or for any person, corporation, or public utility, in violation or claimed to be in violation of any provision of law or of any rule or order or decision of the commission. The formal complaint shall contain the following information:

- (A) The name and street address of each complainant and, if different, the address where the subject utility service was rendered;
- (B) The signature, telephone number, facsimile number, and email address of each complainant or their legal representative, where applicable;
- (C) The name and address of the person, corporation, or public utility against whom the complaint is being filed;
- (D) The nature of the complaint and the complainant's interest in the complaint, in a clear and concise manner;
- (E) The relief requested;
- (F) A statement as to whether the complainant has directly contacted the person, corporation, or public utility about which complaint is being made;
- (G) The jurisdiction of the commission over the subject matter of the complaint; and
- (H) If the complainant is an association, other than an incorporated association or other entity created by statute, a list of all its members.

(5) No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any public utility unless the complaint is signed by the public counsel, the mayor or the president or chairman of the board of aldermen or a majority of the council or other legislative body of any town, village, county, or other political subdivision, within which the alleged violation occurred, or not fewer than twenty-five (25) consumers or purchasers or prospective consumers or purchasers of public utility gas, electricity, water, sewer, or telephone service as provided by law. Any public utility has the right to file a formal complaint on any of the grounds upon which complaints are allowed to be filed by other persons and the same procedure shall be followed as in other cases.

10. Laclede is an investor-owned gas utility, subject to the regulation of the Commission as described in Chapters 386, and 393, RSMo.

11. Laclede's current gas rates were established by the Commission and made effective on July 8, 2013, in the company's last general rate case, contained in Commission Case Number GR-2013-0171. This case was settled through a *Stipulation and Agreement* approved by the Commission June 26, 2013. In this *Stipulation and Agreement*, the parties agreed Laclede would include its then current ISRS revenues of \$14,811,000 in base revenues. No specific return on equity, rate of return, or capital structure was approved by the Commission at that time.

12. MGE's current gas rates are controlled by the Commission's order made effective on May 1, 2014 contained in Commission Case Number GR-2014-0007. This case was also settled through a *Stipulation and Agreement* approved by the Commission on April 11, 2014 where the parties agreed that MGE should be permitted to increase rates by \$7,800,000 effective May 1, 2014. No specific return on equity, rate of return or capital structure was approved by the Commission in GR-2014-0007.

13. The Commission is required to set just and reasonable rates. Section 393.150.2 RSMo. Every unjust or unreasonable charge is prohibited. See Section 393.130.1 RSMo. In *State ex rel. Utility Consumers Council of Missouri v. Public Service Commission*, 585 S.W.2d 41 (Mo. banc 1979), the Missouri Supreme Court explained the appropriate level of rates must be determined based upon a consideration of all relevant factors. In determining the price to be charged for utility service, the Commission may consider all facts which in its judgment have any bearing upon a proper determination with regard to, among other things, a reasonable average return upon capital actually expended. Section 393.270 RSMo.

14. A reasonable return on equity, as developed by the U.S. Supreme Court is: (1) adequate to attract capital at reasonable terms, thereby enabling the utility to provide safe and reliable service; (2) sufficient to ensure the Companies' financial integrity; and (3) commensurate with returns on investments in enterprises having corresponding risks. See *Bluefield Waterworks and Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923); *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591 (1944).

15. It is clear that the return on equity is an integral component of setting just and reasonable rates. However, in many cases, as a result of settlement, and as in both Laclede's and MGE's most recent rate cases, a specific ROE is not delineated. Standing alone, not specifying a particular ROE does not mean the Commission-established rates are unjust or unreasonable because it is the impact of the rate which counts. Quoting the U.S. Supreme Court, in *State ex rel. Associated Natural Gas Co. v. Pub. Serv. Comm'n*, 706 S.W. 2d 870, 873 (Mo. App., 1985), the Missouri Court of Appeals said:

[T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.' ... Under the statutory standard of 'just and reasonable' it is the result reached, not the method employed which is controlling. **It is not theory but the impact of the rate order which counts.** [emphasis added]

THE COMPLAINT

16. Since the time the Commission established rates for Laclede in GR-2013-0171, Laclede has enjoyed significant and substantial earnings. An actual ROE that is significantly higher than necessary to attract capital to provide safe and reliable service or significantly higher than commensurate returns by enterprises having corresponding risks indicates that the current ordered rates are no longer just and reasonable.

17. Based upon evaluation of surveillance reports filed quarterly along with Laclede's earning reports issued with the Securities and Exchange Commission ("SEC") for the fiscal year ended September 30, 2015, it is estimated Laclede's actual return on equity significantly exceeds what state utility commissions awarded in 2015 for natural gas companies such as Laclede. As a result of its actual earned ROE in 2015, Laclede's rates charged to its Missouri jurisdictional ratepayers are no longer just and reasonable and therefore require adjustment.

18. Regulatory Research Associates (RRA) provides independent research and consultation on energy securities and regulation. According to the January 14, 2016 edition of RRA's *Regulatory Focus*, the average ROE for gas utilities in 2015 was 9.60%. This average ROE of gas utilities throughout the U.S. was based on 16 separate gas utilities. 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.

19. In addition to the average Commission-authorized ROE for natural gas utilities in 2015 being 9.6%, the RRA reported in its March 2016 Report the results of two recent Midwest gas utility rate cases. In these 2016 Arkansas and Oklahoma natural gas utility rate cases, both ending in a settlement with ROEs of 9.4% and 9.5% respectively:

Arkansas—On Jan. 28, the Arkansas Public Service Commission voted to adopt a settlement, with modifications, in SourceGas LLC subsidiary SourceGas Arkansas Inc.'s base rate proceeding. The authorized rate increase was later identified as \$8 million. The settlement specified a 9.4% return on equity (39.46% of a regulatory capital structure) and a 5.33% return on a rate base valued at \$374.2 million base.

Oklahoma—On Jan. 6, the Oklahoma Corporation Commission authorized ONE Gas division Oklahoma

Natural Gas \$30 million gas base rate increase, following a settlement. The increase is premised upon a 9.5% return on equity (60.5% of a consolidated capital structure) and a 7.31% return on a rate base valued at \$1.202 billion.

20. It is in the rate-paying public's best interest for the Commission to evaluate the company's cost of service and revenue requirement to determine just and reasonable rates going forward. In addition, in order to preserve for the Commission's future consideration the impact and extent of the over-collection, the Commission should order Laclede to track, defer and record all revenues recorded that exceed a 9.6% return on its regulated equity balance, on a quarterly basis. Requiring the Company to preserve this information will aid the Commission in setting just and reasonable rates in the future and for any such further relief as the Commission deems appropriate.

21. Since the time the Commission established rates for MGE in GR-2014-0007, the company has enjoyed significant and substantial earnings. An actual ROE that is significantly higher than necessary to attract capital to provide safe and reliable service, or significantly higher than commensurate returns by enterprises having corresponding risks indicates that the current ordered rates are no longer just and reasonable.

22. Based upon evaluation of surveillance reports filed quarterly along with MGE's earning reports issues with the SEC for the fiscal year ended September 30, 2015, it is estimated that MGE's actual return on equity significantly exceeds what state utility commissions awarded in 2015 for natural gas companies such as MGE. RRA provides independent research and consultation on energy securities and regulation. According to the January 14, 2016 edition of RRA's *Regulatory Focus*, the average ROE for gas utilities in 2015 was 9.60%. This average ROE of gas utilities throughout the U.S. was based on 16 separate gas utilities. In its fiscal year 2015 Annual Report filed with the

Securities and Exchange Commission, MGE's financial results reflect ROE of 10.45% for its Laclede and MGE operating divisions.

23. In addition to the average Commission authorized ROE for natural gas utilities in 2015 being 9.6%, the RRA reported in its March 2016 Report the results of two recent Midwest gas utility rate cases. In these 2016 Arkansas and Oklahoma natural gas utility rate cases, both ending in a settlement with ROEs of 9.4% and 9.5% respectively:

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Oklahoma—On Jan. 6, the Oklahoma Corporation Commission authorized ONE Gas division Oklahoma Natural Gas \$30 million gas base rate increase, following a settlement. The increases is premised upon a 9.5% return on equity (60.5% of a consolidated capital structure) and a 7.31% return on a rate base valued at \$1.202 billion.

It is in the rate-paying public's best interest for the Commission to evaluate the company's cost of service and revenue requirement to determine just and reasonable rates going forward. In addition, in order to preserve for the Commission's future consideration the impact and extent of the over-collection, the Commission should order MGE to track, defer and record all revenues recorded that exceed a 9.6% return on its regulated equity balance, on a quarterly basis. Requiring the Company to preserve this information will aid the Commission in setting just and reasonable rates in the future and for any such further relief as the Commission deems appropriate.

THE BASIS FOR EXPEDITED TREATMENT

24. MGE and Laclede also collect millions of dollars from rate payers through their respective Infrastructure System Replacement Surcharge (“ISRS”) surcharges.

25. Per the requirements of its current ISRS, Laclede and MGE are required to file rate cases, after the initial ISRS rate is approved, every three years if they wish to continue charging customers the ISRS surcharge.

26. Under the current ISRS statutes as well as corresponding regulation, Laclede and MGE are able to file ISRS petitions every six months.

27. Currently, OPC has appealed a decision by the Commission allowing Laclede and MGE to offer true-ups and other adjustments in their ISRS petitions contrary to existing ISRS statutes and regulations. The style of this case is *Office of Public Counsel, Appellant vs. Public Service Commission, Respondent*, Appeal No. WD79349.

28. Further, OPC has an ongoing matter before the Commission involving the same issues of improper ISRS petitions subject to the appellate matter. The numbers for these matters are GO-2016-0196 and GO-2016-0197 and the OPC would refer the Commission to its files for a complete rendition of those facts.

29. Without Commission action culminating in a reduction in rates, Laclede and MGE will likely continue charging and collecting unjust and unreasonable rates from customers through the overearnings as well as the improper adjustments to their respective ISRS matters.

MOTION FOR EXPEDITED TREATMENT

30. Because Laclede’s and MGE’s unjust rates are so significant, and expected to continue to be so until the Commission establishes new rates, as well as the unjust and unreasonable adjustments made to their ISRS due to cases pending before the

Commission as well as the Court of Appeals – Western District, expedited review of this complaint and expedited relief is in the public interest within the meaning of Section 386.390 RSMo. and 4 CSR 240-2.080(14). As recognized in *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 48 (Mo. banc 1979), such an emergency need for rate relief is a basis for expedited relief. Complainant respectfully requests that the Commission set an expedited schedule.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission: 1) review this Complaint on an expedited basis; 2) order that Laclede Gas and MGE answer this complaint within 30 days; 3) set an intervention period; 4) direct Staff to conduct whatever investigation and recommendations are necessary under the circumstances; 5) order Laclede and MGE to track and record any rates collected at or over the reasonable rate; and 6) revise Laclede Gas' and MGE's gas rates to just and reasonable gas rates consistent with their respective cost of service and revenues.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ James M. Owen

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 26th day of April 2016.

Staff Counsel
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/s/ James M. Owen
