

**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)

**RESPONSE OF LACLEDE GAS COMPANY IN OPPOSITION TO OPC’S
DECEMBER 9 MOTION, OR IN THE ALTERNATIVE,
MOTION TO STRIKE CERTAIN ISSUES**

COMES NOW Laclede Gas Company (“Laclede” or “Company”), on behalf of itself and its Missouri Gas Energy (“MGE”) operating unit, and submits its Response in Opposition to OPC’s December 9 Motion to Deny Proposed Rate Increases, or, in the alternative, Motion for Hearing (the “OPC Motion”). In the alternative, Laclede submits its Motion to Strike Certain Issues. In support thereof, Laclede states as follows:

1. On September 30, 2016, Laclede filed two Infrastructure System Replacement Surcharge (“ISRS”) Applications pursuant to Sections 393.1009-1015 RSMo (the “ISRS Statute”), one each for its Laclede Gas and MGE service territories. On November 29, 2016, the Commission Staff completed its audit and filed its report regarding the ISRS charges that should be approved for Laclede and MGE. The Staff made its filing within the 60-day period mandated by the ISRS Statute for completing such work. *See* 393.1015.2(2).

2. OPC filed no report or recommendation regarding the ISRS filings on or before November 29.

3. On November 30, the Commission issued orders directing Laclede and MGE to respond to Staff's recommendation by December 9, 2016. The orders also permitted any other party to respond to Staff's recommendation by that date. On December 9, Laclede and MGE filed their responses, concurring with Staff's recommendations and submitting specimen tariff sheets consistent with those recommendations.

4. On December 9, 2016, or 70 days after the ISRS filings, OPC filed the OPC Motion requesting that the Commission deny both ISRS filings in their entirety or, in the alternative, schedule a hearing to address four new issues OPC raised for the first time in these cases. Contrary to the directive given in the Commission's November 30 Order, the OPC Motion did not respond to the Staff's Recommendations. Nor did it even purport to, as evidenced by the title of the pleading, which clearly indicated that OPC was proposing new adjustments to the ISRS filings, and the fact that the pleading did not even mention the Staff's Recommendation until paragraph 18 on page 13, the second to last page of the pleading. When it finally did, the OPC Motion acknowledged that "The Staff Recommendations do not identify the concerns raised by OPC in this motion." In other words, rather than responding to Staff's Recommendation, the OPC Motion raised entirely new issues that were not addressed by Staff at all.

5. The Commission should not permit OPC to ignore the November 30 order and introduce new issues rather than respond to Staff's Recommendations. Allowing OPC's tactic would be inconsistent with the Commission's decision in Case No. ER-2014-0370, in which the

Commission rejected KCPL's attempt to raise an issue in surrebuttal testimony rather than its case-in-chief. (*See* Report and Order dated September 2, 2015, p. 54)

6. In addition to being an improper response to Staff Recommendations, the OPC Motion should have raised these new issues by the 60-day statutory deadline. While that deadline is not addressed specifically to OPC, there is no question that the Legislature intended that all issues in an ISRS case be raised by Day 60, so that they can be addressed and decided by the Commission ahead of the 120-day statutory deadline.

7. Further, OPC knew that it needed to respond by the 60-day deadline. On page 14 of its Direct Testimony filed on December 16 in these cases, OPC testified to the following:

- Q. Did Laclede's decision to provide the supporting documentation so late in the process harm OPC's ability to effectively audit the ISRS petitions?
- A. Yes. The ISRS statute allows only 60 days to audit tens of millions of dollars of ISRS plant work orders...Even with the legally-mandated 60 day audit period, OPC struggles to complete an audit of an ISRS Application.

8. By not raising its issues within the prescribed period for making recommendations on an ISRS filing OPC has forfeited its right to raise issues in these cases and the Commission should so determine. The evidence demonstrating why the 60-day deadline was mandated by the legislature and why it must be adhered to can be found in the unfair and inadequate procedural schedule forced upon the parties and the Commission by OPC's dilatory actions. The December 14 procedural schedule affords Laclede and Staff only one week to muster rebuttal testimony on the four issues covered by OPC's December 16 testimony, after which a hearing is scheduled on the first business day after the New Year. Neither Laclede nor Staff should be placed in this position because OPC failed to identify issues until 10 days after the last date for doing so.

9. The statutory deadline is not an arbitrary deadline selected by the legislature in order to just draw a line somewhere. Given the 120-day process established for ISRS cases, raising issues by the 60th day is crucial in being able to provide due process to all parties.

10. OPC's filing on the 70th day is even more egregious in light of the fact that the matters OPC complained of are all longstanding practices of which OPC was, or should have been, well aware. The fact that there is a relatively small amount of plastic interspersed in cast iron mains is not a secret, but has been present in work order detail for years and has been known to OPC. Hydrostatic testing has been part of the MGE ISRS plans that have been submitted to OPC, at its request, for at least three years and can be readily viewed in appendixes to the Applications. The capitalized portion of incentive compensation is an inappropriate ISRS issue in that it involves the very kind of "revenue requirement or ratemaking issues" that the ISRS statute prohibits the Commission from considering in an ISRS proceeding, but it still could have been raised at any time during the first 60 days of these ISRS cases. Finally, the update issue has been tried twice before the Commission, and a Commission order on this issue has been affirmed by the Western District Court of Appeals. It should be noted that although OPC repeatedly complains about the update process, none of the items OPC raised after the statutory deadline arose as a result of the update process. In any event, it is indisputable that the update issue could have easily been raised within the 60 day period mandated by the ISRS Statute.

11. OPC should not be permitted to defy the legislature by inserting itself in ISRS cases, flouting the strict time periods in those cases and then requesting that the Commission deny the ISRS recoveries that the legislature authorized to accelerate gas safety work. While OPC failed to timely raise issues in these cases, it is not precluded from trying to timely raise them in the next ISRS cases, which have and will occur on a regular basis.

12. Laclede and MGE request that the Commission reject the OPC Motion and find that OPC raised the four issues in the OPC Motion too late to meet the statutory requirements or to fairly process those issues in this case.

13. OPC's failure to raise issues within the legally-mandated 60-day period leaves the Staff's Recommendations as the only timely filed reports in these cases. Laclede and MGE both supported the Staff's report in their December 9 pleadings. The December 9 OPC Motion did not address Staff's Recommendations except for some vague grumbling about the scope of Staff's audits on page 13, and an admission that there is no connection between Staff's Recommendation and the issues raised by OPC..

14. For all of the reasons, Laclede and MGE request that the Commission deny the OPC Motion in its entirety. Given the lack of opposition to the Staff Recommendations, the Commission should approve those recommendations, direct Laclede to file tariffs that reflect Staff's recommended rates, and cancel the procedural schedules.

MOTION TO STRIKE CERTAIN ISSUES

15. If the Commission chooses to entertain the four issues raised by OPC despite its violation of the statutory timeframes as discussed above, Laclede and MGE move to strike two of those issues: the incentive compensation issue and the update issue.

16. Incentive Compensation. OPC has now questioned the decade old practice of allocating to ISRS plant the capitalized portion of the Company payroll and benefits, a small portion of which may include some earnings-based incentive compensation. The amount of incentive compensation that should be in rates, however, is a ratemaking issue that is properly determined in a rate case. It is not a subject for the focused purpose of an ISRS filing. In fact, Section 393.1015.2(2) explicitly directs the Staff to examine the Company's information to

determine two distinct matters: whether projects qualify as ISRS-eligible and whether the charges were properly calculated. The section goes on to state that “No other revenue requirement or ratemaking issues may be examined in consideration of the petition...” While Laclede looks forward to demonstrating the customer benefits of a compensation plan that includes incentives, that demonstration must occur in a rate case, and not in an ISRS case. Indeed, when calculating ISRS charges, the ISRS Statute prescribes that the Commission consider only income and property tax rates, capital structure, cost of capital and depreciation rates. (Section 393.1015.4 RSMo).

17. Staff accurately summarized its role in an ISRS audit in a Recommendation and Memorandum filed on March 31, 2015 in a Laclede ISRS case, Case No. GO-2015-0178, as follows:

“The scope of Staff’s examination of an ISRS application consists of two parts. The first part is a review of the accuracy of the calculation of the ISRS revenue requirement components used to calculate the overall proposed ISRS revenue requirement. This part of Staff’s examination included reviewing Laclede’s calculation of the appropriate capital structure and capital cost rates, income tax rates, return on plant, depreciation expense, property taxes, depreciation reserve, and deferred income taxes...

The second part of Staff’s examination consisted of a review of the plant work order documentation supporting the inclusion of the costs of specific gas plant projects in Laclede’s ISRS application.” (Staff Memorandum, pp. 3-4)

18. Notably, this analysis of the Staff’s audit function was authored by Charles Hyneman, then of Staff’s Audit Department. Mr. Hyneman, now an auditor and witness for OPC, is attempting to raise in these 2016 ISRS cases the very type of ratemaking issue that he acknowledged did not belong in Laclede’s 2015 ISRS case. This issue should be struck from these cases.

19. Update. The updating issue involves the Company's inclusion of two months of updated ISRS plant, a practice that has twice been affirmed by the Commission in two recent ISRS proceedings, and was also affirmed by the Western District Court of Appeals. OPC's request to transfer the Court of Appeals decision to the Missouri Supreme Court could, if successful, have an impact of the treatment of these costs. However, having heard the same issue twice in the past year, the Commission is entitled to find that the issue has been decided. There is no legal justification for using the Commission's and party's resources to litigate the same issue for a third time. If this issue is to be tried again, Laclede requests that the time involved not be charged to it or the other gas companies but be assessed against OPC.

WHEREFORE, for the foregoing reasons, Laclede Gas Company respectfully requests, on behalf of itself and its MGE operating unit, that the Commission deny the Motion filed by OPC on December 9, 2016 in its entirety, direct the Companies to file tariffs consistent with the Staff Recommendations, and cancel the procedural schedules. In the alternative, the Commission should strike the two issues identified herein from any further consideration.

Respectfully submitted,

/s/ Rick Zucker
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Certificate of Service

I hereby certify that copies of the foregoing have been emailed to Staff and Public Counsel on this 19th day of December, 2016.

/s/Marcia Spangler