

In the matter of Laclede Gas Company's)
application to establish depreciation rates for) **Case No. GO-2012-0363**
Enterprise Computer Software Systems)

COMES NOW Laclede Gas Company (“Laclede” or “Company”) and files this Response to the Motion for Summary Determination filed by the Office of the Public Counsel (“Public Counsel”) on June 13, 2012. In support of its Response, Laclede states as follows:

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3. Second, summary determination is not appropriate because it is premature. Rule 2.117(1)(A) states that summary determination may be requested 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. In this case, there is no named respondent. But even if Public Counsel is deemed to be a respondent, it did not file a pleading responsive to Laclede's Application, which is a prerequisite to a motion for summary determination. Intervention is governed by 4 CSR 240-2.075. The intervention period ends 30 days after the Commission issues an order giving notice of the case. Public Counsel's motion was filed on June 13, 2012, which is less than 30 days after the Application itself was filed.¹ In summary, since there is no respondent, since there have been no responsive pleadings filed even if there was a respondent, and since the intervention period could not yet have closed, a motion for summary determination should be denied as premature.

4. Third, summary determination is inapplicable. A motion for summary determination is supposed to set out in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to pleadings, testimony, discovery or affidavits. Public Counsel's motion did not set forth any facts, because at the time it filed its motion there had been only one pleading (the Application). No testimony, discovery or affidavits had been submitted. Instead of summary determination, Public Counsel's motion is more appropriately viewed as a motion to dismiss for failure to state a claim. In the Commission's rules, the more applicable section is Determination on the Pleadings, Rule 2.117(2). A determination on the pleadings is also not permitted in a case seeking a rate increase, so Public Counsel's motion would fail regardless of whether Public Counsel was right or wrong for the reasons given in paragraph 2 above.

¹ The Application was filed on May 18, 2012

5. Fourth, even if a Determination on the Pleadings was allowable, granting it would be both contrary to law and to the public interest. Summary disposition is inappropriate for at least two reasons. First, summary disposition is inappropriate because there are genuine issues of material fact. For example:

(a) Public Counsel repeatedly claims that Laclede is attempting to *change* a depreciation rate to effectively increase its rates. In the Application, however, Laclede was very clear that it was seeking to establish a *new* depreciation rate for its enterprise information system asset, an asset that currently does not have a rate. Moreover, since it filed its Application, Laclede has also submitted the pre-filed direct testimony of Glenn W. Buck, Laclede's Manager of Financial Services. At page 6 of that direct testimony, Mr. Buck clearly and unambiguously testifies that, contrary to OPC's factual assertion, Laclede is not seeking to change its depreciation rate but rather to establish a new depreciation rate for a new class of assets. As Mr. Buck states:

As the Company begins to implement the various components of EIMS, it is critical that Laclede have an authorized, Commission-approved depreciation rate effective for the beginning of the Company's next fiscal year (October 1, 2012) that can be applied to this kind of transformative information management asset. Currently, Laclede has only one depreciation account in effect for software, and it is wholly inapplicable to the kind of fundamental restructuring of information management assets represented by EIMS. Indeed, given their cost and complexity, it has been the Company's experience that such wholesale changes to its information management systems for core functional areas only occur over intervals spanning from 15 to 25 years, with the CIS system I just discussed being an example of one that has survived the longest.

(b) In a related argument. Public Counsel also asserts that the Company's current depreciation rate of 20% for certain kinds of computer software is applicable to the EIMS investment. Again, this factual assertion is flatly contradicted by the pre-filed

testimony of Mr. Buck who explains in detail why a significantly lower depreciation rate and longer service life for this investment is appropriate and far more consistent with the Company's actual experience with similar, albeit less comprehensive, information management systems. (Buck Direct Testimony, pp. 5-6).

(c) In its Motion, Public Counsel also argues that Laclede's proposal to establish a new depreciation rate is analogous to the factual situation in an Ameren electric case in which OPC proposed and the Commission declined to change the depreciation rates for the Company's Callaway plant. Again, however, there are genuine issues of material fact regarding the circumstances prevailing in the Ameren case versus those prevailing in this case. As Mr. Buck explains at pages 10-11 of his pre-filed direct testimony, the facts in these two cases:

“are very different. To begin with, in the Ameren case, the Commission was faced with a depreciation proposal by OPC that would have had an *immediate* impact on rates in that case. In other words, Commission acceptance of OPC's proposal would have resulted in an immediate reduction in the rates being authorized by the Commission in that case. In contrast, Commission approval of the new depreciation rate proposed by [Laclede] would have no impact on rates at this time – a difference that OPC seems to recognize in its Motion by implying that approval of the depreciation rate proposed in this case *might* have an impact on *future* rates.”

6. Mr. Buck goes on in his testimony to outline other key factual differences between the Ameren case and the case that is before the Commission in this proceeding. (Buck Direct, pp. 12-14) In its motion, however, Public Counsel completely ignores or assumes away these factual disputes. Because such facts are genuinely in dispute, due process requires that Laclede be afforded an opportunity to submit evidence on the

matter, rebut opposing views, and cross-examine witnesses. Hence, summary disposition is not appropriate because there are numerous genuine issues of material fact.

7. The second reason that a Determination on the Pleadings is not appropriate is that, even if Public Counsel is correct – that Laclede is asking to change a depreciation rate – as a matter of law, the Commission is not prohibited from doing so outside the context of a rate case. The Commission has taken numerous actions relating to Laclede and other utilities over the years to alter depreciation rates or otherwise account for depreciation expense outside of a rate case or in a manner differently than other expenses. Specifically, the Commission has approved depreciation rates to be effective months prior to the effective date of a rate case order granting such approval (*See e.g. Case No. GR-98-374*); approved depreciation rates to be effective months after the effective date of a rate case order granting such approval (*See e.g. Case No. GR-2005-0284*); approved or considered changes in depreciation rates in proceedings held between rate cases, (*See e.g. Case No. GO-81-62; Case No. GR-99-315*); and allowed utilities to defer depreciation expense in connection with certain cost items in between rate cases. (*See e.g. State of Missouri ex rel. Public Counsel v. Public Service Commission*, 858 S.W.2d 806 (Mo. Ct. App. W.D. 1993)). Laclede also has a number of letters in its files where the Commission or its Staff authorized a change in depreciation rates or the establishment of new rates outside of general rate case proceedings. Copies of such letters are attached. In short, Public Counsel’s theory that it is unlawful to change a depreciation rate between cases, is simply inconsistent with the Commission’s historical and routine exercise of that power over the years.²

²Even accepting Public Counsel’s theory that the Company’s proposal constitutes a change in depreciation rates, granting such relief would be analogous to the Commission granting an accounting authority order. It is well established under Missouri law that granting such accounting authorizations in between rate cases is perfectly permissible and does not run afoul of the general prohibition against single issue ratemaking so long as the

8. At the same time, of course, if Laclede is correct – that it is seeking to establish a new depreciation rate for its enterprise information management system – it is very clear that the Commission may grant such a request and that dismissing such request on summary disposition would be legal error.³ In recent years, the Commission has twice approved new depreciation rates for new items in proceedings outside of rate cases. In *Case No. GE-2010-0030*, the Commission approved a new depreciation rate for MGE. And in just the past month, the Commission approved, without objection by OPC, new depreciation rates and accounting authorizations for certain assets owned by KCP&L and KCP&L Greater Missouri Operations. (*See Case No. EO-2012-0340*) Under these circumstances, it would be fundamentally inconsistent with notions of fair and non-discriminatory treatment not to grant Laclede an opportunity to obtain similar relief.

9. Finally, Laclede has made it very clear in its Application and the direct testimony of Mr. Buck, that the Commission and the parties will all retain their rights to challenge the Company's recovery of its new EIMS investment before such costs are actually reflected in rates. Given these assurances, and the substantial judicial and Commission precedent upholding the Commission's ability to establish or change depreciation rates and make other changes in how costs are accounted for between rate cases, there is no basis for Public Counsel's position that doing so here would run afoul of any single issue ratemaking prohibition.

Commission and parties retain the opportunity in a subsequent rate case to take into consideration all relevant factors and propose adjustments to any costs that may be deferred or otherwise impacted by the accounting authorizations before those costs are reflected in rates. *See State ex rel. Office of the Public Counsel v. Missouri Public Service Commission*, 848 S.W.2d 806 (W.D. Mo. 1993). *See also State ex rel. Office of the Public Counsel, v. Missouri Gas Energy*, 301 S.W.3d 556 (Mo. App. W.D. 2010). Under the Company proposal, the Commission, Staff and OPC retain that ability.

³ Section 393.240 RSMo authorizes the Commission to ascertain, determine and fix proper and adequate rates of depreciation.

WHEREFORE, based on the foregoing reasons, Laclede Gas Company respectfully requests that the Commission deny Public Counsel's Motion for Summary Determination.

Respectfully submitted,

/s/ Michael C. Pendergast

Michael C. Pendergast #31763
Vice President & Associate General Counsel

Rick E. Zucker #49211
Assistant General Counsel –Regulatory
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St. Louis, MO 63101
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(314) 421-1979 (fax)
E-mail:

ATTORNEYS FOR LACLEDE GAS COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Application was served on the General Counsel of the Staff of the Missouri Public Service Commission and the Office of the Public Counsel on this 13th day of July, 2012 by hand-delivery, fax, electronic mail or by placing a copy of such Application, postage prepaid, in the United States mail.

/s/ Gerry Lynch

Gerry Lynch

E. L. McCLINTOCK
WILLIAM BARTON

COMMISSIONERS
TYRE W. BURTON
CHAIRMAN

FRANK J. IJEN
FRANK W. MAY

GLENN D. EVANS
GENERAL COUNSEL

THOMAS J. DOWNEY
ASSISTANT GENERAL COUNSEL

R. E. DUFFY
CHIEF ENGINEER

JAMES M. ENGLAND
CHIEF ACCOUNTANT



STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

Jefferson City

PATRICIA NACY
SECRETARY

September 18, 1961

GEORGE G. FOX
CHIEF RATE EXPERT

CARLE R. NEWBERRY
SUPERVISOR
BUS AND TRUCK DEPT.

WARREN G. TAYLOR
RAILROAD SAFETY SUPERVISOR

LILLIAN M. CUNNINGHAM
CHIEF COURT REPORTER

Laclede Gas Company
St. Louis, Missouri

ATTENTION: Mr. Homer Thorp

Gentlemen:

Please be advised that in response to the proposed depreciation accrual rates submitted by the Company to the Commission's Engineering Department, the Commission has given consideration to the proposed rates as submitted and to the Staff's report relative thereto.

This letter authorizes the Laclede Gas Company to adopt the following depreciation rates, effective October 1, 1961:

New P.S.C. Account Number	New Laclede Account Number	Title	Depreciation Rate
305	305.00	Manufactured Gas Production Plant	
307	307.00	Structures and Improvements	2.74%
311	311.00	Other Power Equipment	2.34
312	312.00	Liquefied Petroleum Gas Equipment	2.75
317	317.00	Oil Gas Generating Equipment	2.91
320	320.00	Purification Equipment	2.39
		Other Equipment	2.65
		<u>Underground Storage Plant</u>	
350.3	350.30	Storage Rights	4.09
350.4	350.40	Rights-of-Way	4.77*
351.2	351.20	Compressor Station Structures	3.15
351.4	351.40	Other Structures	4.03
352	352.00	Wells	4.72
353	353.00	Lines	4.23
354	354.00	Compressor Station Equipment	3.57
355	355.00	Measuring and Regulating Equipment	4.49
356	356.00	Purification Equipment	4.22
357	357.000	Other Equipment	4.06

* After exclusion of oil rights in the amount of \$652,204.75, which amount is being amortized.

Laclede Gas Company
Depreciation Rates

- 2 -

New P.S.C. Account Number	New Laclede Account Number		Depreciation Rate
361	361.00	Local Storage Plant	
362	362.00	Structures and Improvements	2.31%
363	363.00	Gas Holders	1.90
		Other Equipment	2.69
		Distribution Plant	
375	375.10	Structures and Improvements-Distribution	
		Measuring and Regulating	1.50
375	375.20	Structures and Improvements-Distribution	
		Service Centers and Storerooms	2.43
375	375.30	Structures and Improvements-Distribution	
		Garages	1.86
376	376.10	Mains - Steel	3.84
376	376.20	Mains - Cast Iron	1.41
378	378.00	Measuring and Regulating Station	
		Equipment - General	2.68
379	379.00	Measuring and Regulating Station	
		Equipment - City Gate	2.50
380	380.10	Services - Steel	3.54
380	380.20	Services - Copper	3.54
381	381.00	Meters	2.32
383	383.00	House Regulators	2.05
385	385.00	Commercial and Industrial Measuring	
		and Regulating Station Equipment	2.64
387	387.00	Other Distribution Equipment - Street	
		Lighting	3.97
		General Plant	5.83
390	390.00	Structures and Improvements	1.55%
391	391.00	Office Furniture and Equipment	4.40
392	392.10	Transportation Equipment-Automobiles	13.64
392	392.20	Transportation Equipment - Trucks	9.75
393	393.00	Stores Equipment	3.92
394	394.00	Tools, Shop and Garage Equipment	4.12
395	395.00	Laboratory Equipment	4.00
396	396.00	Power Operated Equipment	7.15
397	397.00	Communication Equipment	28.57
398	398.00	Miscellaneous Equipment	5.45

Authorization for use of the above rates is granted with the knowledge of the Commission. The rates herein authorized will remain effect until conditions warrent further review and finding.

APPROVED:

Very truly yours,

Wm. Barton
Wm. Barton
Wm. Barton
Wm. Barton
William Barton Absent

Richard A. Kieselbach
Richard A. Kieselbach
Engineer

LACLEDE GAS COMPANY
INTRA-COMPANY CORRESPONDENCE

June 2, 1965

Messrs. E. B. DeBroeck
G. F. Smith

We are in receipt of a letter dated May 27, 1965 from Mr. Richard A. Kieselbach, Assistant Chief Engineer of the Missouri Public Service Commission in regard to our proposal of April 13, 1965 regarding amortization of the improvements to be made on the parking lot at 3950 Forest Park Blvd.

The following paragraphs are quoted from Mr. Kieselbach's letter:

It appears that your proposed treatment of the subject plant is in accordance with procedures set forth in the Federal Power Commission Uniform System of Accounts but we believe that because of the relatively small amount involved your proposal is an unnecessary refinement.

Although the present prescribed depreciation rate for this type of plant may not be adequate at this time, the rate may be adjusted at the time of the next depreciation rate study to reflect the expected shorter service life of the subject plant. This would have the effect of accruing adequate, or nearly adequate, reserve for depreciation.

It is therefore recommended that you capitalize this property in Account 37~~1~~⁵.20, Structures and Improvements, Distribution Centers and Storerooms, and compute depreciation accruals on the basis of the depreciation rate prescribed for this account.

In accordance with this letter, we will therefore proceed to amortize these improvements by charges to depreciation at the rate of 1.83% applicable to Account 37~~1~~⁵.20. This should be brought to the attention of Engineering personnel when making our next depreciation rate study.

JPC:h

James P. Cummings

cc: H. F. Voertman

See WO 60958
✓ ✓ 61252

LACLEDE GAS COMPANY
INTRA-COMPANY CORRESPONDENCE

WD 61572

Auth 6/1/67

July 20, 1967

Messrs. E. B. DeBroeck ✓
C. J. Wagner
G. F. Smith:

Mr. Hays has forwarded a letter to me from Mr. John O. Richey of the Engineering Department of the Missouri Public Service Commission approving a depreciation rate of 14.00% for Account 391.10, Office Furniture and Equipment Data Processing Systems.

Mr. Richey's letter goes on to say that a new depreciation authority Order will be prepared by the Commission and sent to the Company shortly.

Kindly see that the depreciation accruals effective with business for the month of July are based upon this percentage.

For purposes of P.S.C. reporting Account 391.10 should be treated as a primary P.S.C. account according to Mr. Richey's letter.


James P. Cummings

JPC:vmh
CC: R. C. Jaudes
E. A. Lunte
M. G. Meadows
C. M. Rainey

James P. Cummings
6/20/67

R. S. MCCURTICK
C. D. McDONALD

COMMISSIONERS
FRED W. BURTON
GEORGE W. HARRIS

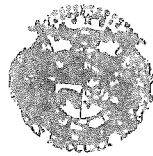
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PUBLIC SERVICE COMMISSION
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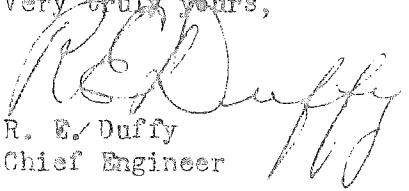
Mr. Homer L. Throp
Assistant to Comptroller
Laclede Gas Company
1017 Olive Street
St. Louis 1, Missouri

Dear Mr. Throp:

This is in reply to your letter of the 15th concerning the rate that you may be allowed to use for accruing depreciation on the plant you recently purchased from Southwestern Bell Telephone Company.

I think your rate of 28.57% for accruing depreciation on the expected remaining life is a proper figure and in my judgement you should handle it that way.

Very truly yours,


R. E. Duffy
Chief Engineer

*fp