BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

LACLEDE GAS COMPANY'S RESPONSE TO THE OFFICE OF THE PUBLIC COUNSEL'S REPLY AND ITS MOTION FOR A RULING REGARDING SUMMARY DETERMINATION

COMES NOW Laclede Gas Company ("Laclede" or "Company") and files this Response to the Reply and to the Motion for a Ruling filed by the Office of the Public Counsel ("Public Counsel") on July 23 and 25, respectively. In support of its Response, Laclede states as follows:

1. In its July 23 Reply, Public Counsel repeats its two main complaints against Laclede's application. First, Public Counsel believes that Laclede will avoid filing a new depreciation study on this asset until the year 2015, allowing any errors made in setting a useful life and depreciation rate in this case to continue for years. Second, OPC is concerned that if such an error occurs, there is no opportunity for the customers to recover the increased depreciation that should have occurred before the asset was incorporated into rates.

2. Laclede believes that the Commission should be aware that the Company has taken steps to address Public Counsel's concerns, and did so before Public Counsel filed its Reply. On July 20, Laclede provided assurances to Public Counsel and Staff that it would (i) file a depreciation study with its next rate case; and (ii) agree that if the Commission approved a different depreciation rate for the EIMS asset in that case, such rate could be used to adjust the depreciation reserve and other cost of service items related to the EIMS asset for the period between October 1, 2012 and the effective date of the new rates.

3. In other words, Laclede has assured the parties that the depreciation rate ordered in this case, and the effect of that order between now and the rate case, are truly like an AAO, in that the Commission can revisit such rate and apply the effect of any change for the period covered by the authorization. Given these assurances, Laclede would submit that the concerns raised by OPC in this proceeding have been fully satisfied and that its Motion for Summary Determination has been effectively mooted.

4. With respect to certain other portions of the Reply, it is well established that the existence of a genuine issue of material fact precludes a summary determination. In this case, Laclede has argued that its enterprise-wide management system does not belong in the general five-year life software bucket, but is a new type of asset that calls for a new depreciation account or subaccount. Public Counsel argues that EIMS is not a new asset but is just another kind of software which does not warrant a new account. The dispute over what exactly EIMS is and where and how it fits into the Company's asset accounts are genuine issues of material fact that should dispose of summary determination as a remedy. However, Public Counsel doggedly argues that there is no fact dispute; that anything that replaces computer software must itself be computer software and must be assigned to the Company's lone software account. In other words, Public Counsel says there is no factual dispute because Public Counsel has determined that Laclede's facts are wrong. Public Counsel cannot by its own decree dismiss genuine issues of material fact.

5. In fact, Public Counsel actually admits that there is a genuine issue of material fact when it states that "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." (Public Counsel Reply, p. 6) While Public Counsel's

characterization oversimplifies the differences between EIMS and legacy software, even if taken as true, this 'disagreement' is the basis for a genuine issue of material fact, because Laclede is entitled to show what new things EIMS does, how it does them, and how that makes it a unique asset. Public Counsel is certainly entitled to argue that a new account is not appropriate, but Laclede is also entitled to its day in court to present its evidence and argue the opposite.

6. Possibly the most important issue for Public Counsel is its perception that denying Laclede's application is necessary for the Commission to act consistent with its decision in an AmerenUE rate case, Case No. ER-2008-0318 (the "Ameren Case").[1] Public Counsel's view is that because Public Counsel lost this issue in the Ameren Case, Laclede must lose it here. But as discussed below Public Counsel is mistaken for two main reasons. First, Public Counsel errs in viewing Laclede's actions as being analogous to single issue ratemaking, because Laclede's case does not involve the same type of factors that led the Commission to find that Public Counsel's request in the Ameren Case was analogous to single issue ratemaking. Second, Public Counsel errs in its belief that Laclede's case must be summarily dismissed because Public Counsel's case was summarily rejected solely on the basis of single issue ratemaking. In fact, the Commission did not summarily reject Public Counsel's case, but considered the evidence that Public Counsel presented and rejected the request on the merits.

7. The Laclede and Ameren cases are not parallel. The asset at issue in the Ameren Case was the Callaway Plant, an asset that was not only already in existence, but had been in use for decades. Public Counsel wanted to lower the depreciation rate on that asset.

[1] See *Report and Order*, dated January 27, 2009, pp. 92-98 (also set forth in the Rebuttal Testimony of Ted Robertson in this case, pp. 12-16).

The Commission found that cherry-picking one depreciation rate for adjustment without looking at a study of other depreciation rates is analogous to single issue ratemaking. In the present case, Laclede is in the process of acquiring and implementing an enormous enterprise-wide information system asset that is unprecedented in the Company's history. Laclede does not seek to change an existing rate for a well-established asset; instead, Laclede is asking to establish a new rate for a brand new asset that does not fit into any current account. Laclede is not attempting to single out an asset to change its rate, but to assign a new rate to a new asset for which no rate is applicable. Therefore, Laclede is not engaging in anything analogous to single issue ratemaking.

8. Second, Public Counsel errs in believing that Laclede's case should be summarily dismissed on the single issue ratemaking theory because the Ameren Case was decided against Public Counsel solely on the basis of single issue ratemaking. In fact, the Commission did *not* rule against Public Counsel solely on the basis of single issue ratemaking. Even after finding that Public Counsel's tack suffered from being analogous to single issue ratemaking, the Commission proceeded to consider the evidence presented by Public Counsel in support of its efforts to lower the depreciation rate on the Callaway Plant. The Commission first noted that the Callaway depreciation issue had actually been raised by the parties in Ameren's previous rate case, and the Commission had decided to take Staff's advice and monitor the differential between the book reserve and the theoretical reserve. So in the Ameren Case, the Commission recognized that Public Counsel was actually raising an issue that had been decided in Ameren's previous rate case. Accordingly, Public Counsel argued that the Commission should revisit the Callaway depreciation issue because there were changed circumstances, as follows: (i) Ameren had confirmed that it would be applying for a

20 year license extension, assuring the elongation of the life of the asset, and (ii) the reserve differential had grown drastically since the previous case. Rather than summarily dismiss Public Counsel's request as single issue ratemaking, the Commission carefully considered both these arguments and rejected them on their merits, finding (i) that the license extension had been considered in the previous case, was already well known and was really not a change at all, and (ii) that the growth in the reserve imbalance was not drastic. As a result, the Commission determined that it would reject Public Counsel's request and would continue to monitor the Callaway depreciation matter.

9. In other words, even though the Commission may have viewed Public Counsel's request as akin to single issue ratemaking, it still considered Public Counsel's evidence and its arguments to lower Ameren's depreciation rate. This is not inappropriate, because while single issue ratemaking is generally disfavored, it is not a blunt instrument that precludes the Commission from considering and taking any action that might have some impact on future rates. A prime example of this are the numerous instances in which the Commission has adopted rule changes outside of general rate case proceedings that will inevitably have an impact on future rates. Another is the AAO, in which the Commission permits a utility to defer a specific expense for potential recovery in a later rate case, under consumer safeguards identical to the ones proposed by the Company in this proceeding. A third example are Commission actions changing or establishing depreciation rates outside of general rate case proceeding, such as the Commission's recent depreciation order issued in the KCPL case, Case No. EO-2012-0340. Therefore, even if one were to assume that Laclede's request, like Public Counsel's request in the Ameren case, was akin to single issue ratemaking, summary determination does not follow. In fact, by agreeing to submit an overall

depreciation study in its next rate case before any ratemaking consequences could possible be reflected in rates, the Company has gone even further and effectively cured the major deficiency that Public Counsel asserts was relied upon by the Commission to reject a change of depreciation rates in the Ameren case.

10. In summary, based on the mistaken view that the depreciation issue in the Ameren Case corresponds to Laclede's application, Public Counsel wants to deny Laclede the very due process rights that were afforded to Public Counsel in the Ameren Case. The Commission should decline to do so and should deny Public Counsel's motion for summary determination.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the Staff and on the Office of the Public Counsel on this 30th day of July, 2012 by hand-delivery, fax, electronic mail or United States mail, postage prepaid.

/s/ Gerry Lynch
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