

**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 Surcharge in its Missouri Gas)
Energy Service Territory)

File No. GO-2016-0332
Tariff No. YG-2017-0048

In the Matter of the Application of Laclede Gas)
Company to Change its Infrastructure System)
Replacement Surcharge in its Laclede Gas)
Service Territory)

File No. GO-2016-0333
Tariff No. YG-2017-0047

REPORT AND ORDER

Issue Date: January 18, 2017

Effective Date: January 28, 2017

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OF THE STATE OF MISSOURI**

In the Matter of the Application of Laclede Gas)
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Replacement Surcharge in its Missouri Gas) Tariff No. YG-2017-0048
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In the Matter of the Application of Laclede Gas)
Company to Change its Infrastructure System) **File No. GO-2016-0333**
Replacement Surcharge in its Laclede Gas) Tariff No. YG-2017-0047
Service Territory)

APPEARANCES

Appearing for **LACLEDE GAS COMPANY AND MISSOURI GAS ENERGY:**

Michael C. Pendergast and **Rick Zucker**, Laclede Gas Company, 700 Market Street, 6th Floor, St. Louis, Missouri 63101.

Appearing for **OFFICE OF THE PUBLIC COUNSEL:**

Marc D. Poston, Deputy Public Counsel, Post Office Box 2230, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102-2230.

Appearing for the **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

Kevin A. Thompson, Chief Staff Counsel, and **Marcella Forck**, Legal Counsel, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

REGULATORY LAW JUDGE: Nancy Dippell

REPORT AND ORDER

I. Procedural History

On September 30, 2016, Laclede Gas Company filed applications and petitions to change its infrastructure system replacement surcharges (ISRS) in its Missouri Gas Energy (MGE) and Laclede Gas Service (Laclede) territories.¹ MGE requested an adjustment to its ISRS rate schedule to recover costs incurred in connection with eligible infrastructure system replacements made during the period March 1, 2016, through August 31, 2016, with pro forma ISRS costs updated through October 31, 2016. Laclede also requested an adjustment to its ISRS rate schedule to recover costs incurred in connection with eligible infrastructure system replacements made during the period March 1, 2016, through August 31, 2016, with pro forma ISRS costs updated through October 31, 2016. Laclede Gas Company provided Staff and Public Counsel updated actual cost information for the pro forma figures throughout Staff's audit on various dates from October 10 through November 21, 2016.

The Commission issued notice of the applications and provided an opportunity for interested persons to intervene, but no intervention requests were submitted in either case. The Commission also suspended the filed tariff sheets until January 28, 2017.

On November 29, 2016, the Staff of the Missouri Public Service Commission (Staff) filed its report recommending a \$72 correction to MGE's proposal due to a journal entry error and a \$7,489 correction to Laclede's proposal due to a difference in

¹ Laclede Exhibit 5, *Verified Application and Petition of Missouri Gas Energy, an Operating Unit of Laclede Gas Company, to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory*, filed Sept. 30, 2016, File No. GO-2016-0332; and Laclede Exhibit 4, *Verified Application and Petition of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory*, filed Sept. 30, 2016, File No. GO-2016-0333. (While these cases were not consolidated, they were heard simultaneously, and this Report & Order addresses both applications.)

the time periods recorded for accumulated depreciation and deferred taxes.² Staff recommended that the Commission reject the original tariff sheets and approve ISRS adjustments for MGE and Laclede based on Staff's determination of the appropriate amount of ISRS revenues.

On December 9, 2016, Laclede Gas Company filed a response accepting Staff's recommendation and attaching specimen tariffs. Also on December 9, 2016, the Office of the Public Counsel (Public Counsel or OPC) filed a motion in each case requesting that the Commission reject the proposed ISRS increase or, alternatively, schedule an evidentiary hearing.³ A joint procedural schedule was set and written testimony was filed.

On December 19, 2016, Laclede Gas Company filed its *Response of Laclede Gas Company in Opposition to OPC's December 9 Motion, or in the Alternative, Motion to Strike Certain Issues* (December 19 Motion). Responses to the December 19 Motion were received and oral arguments were heard prior to the joint evidentiary hearing in these cases on January 3, 2017.

The parties also filed an issues list and statements of position prior to the hearing. The issues list contained five issues including Laclede Gas Company's motion to dismiss. On January 2, 2017, Public Counsel dismissed two of the five issues.

Post-hearing briefs were filed on January 6, 2017. On January 10, 2017, Public Counsel filed a *Motion to Strike Portions of Laclede's Brief or, in the Alternate, Allow OPC to Respond*. On January 16, 2017, Laclede and MGE filed *Laclede and MGE's*

² *Staff Recommendation*, filed Nov. 29, 2016, File No. GO-2016-0332; and *Staff Recommendation*, filed Nov. 29, 2016, File No. GO-2016-0333.

³ *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing*, File Nos. GO-2016-0332 and GO-2016-0333 (filed Dec. 9, 2016).

Motion to Strike and Response to OPC's Motion to Strike. In response, Public Counsel filed the *OPC Response Regarding Motions to Strike* on January 17, 2017.

II. Outstanding Motions

Public Counsel's Motion to Strike

Public Counsel filed a motion to strike portions of Laclede's brief containing citations and excerpts of arguments during other Commission cases on appeal to the Western District Court of Appeals and the Missouri Supreme Court. Public Counsel is correct that these arguments were not specifically included in the evidence of record. Allegations were raised, however, regarding inconsistency with past positions. In fact, the record is replete with discussion of reversal of position by witnesses, individually, and the parties. Additionally, the record on appeal that Laclede references is in the Commission's Electronic and Information Filing System (EFIS) and the Commission could have taken administrative notice of those records. However, the Commission does not find these arguments to be relevant to this decision and did not rely on them in making this determination. Therefore, no prejudice resulted from these arguments and the Commission will deny Public Counsel's motion to strike as moot. Public Counsel's alternative request, to be allowed to respond, will be granted and has been accomplished with Public Counsel's motion to strike.

Laclede's Motion to Strike

With regard to Laclede's motion to strike filed on January 16, 2017, the Commission disagrees with Laclede that "the matter of capitalization versus expense should be stricken from the parties' briefs." The testimony of Mr. Hyneman that Laclede

cites as being particularly offensive was given without objection, so the issue has been raised and is appropriate for briefing. Therefore, Laclede's motion to strike is denied.

Laclede's Motion to Dismiss

On December 19, 2016, Laclede Gas Company filed its pleading asking the Commission to dismiss this action and effectively deny Public Counsel's request for a hearing for several reasons. Laclede Gas Company asked that, alternatively, the issues of updating and incentive compensation be stricken. Public Counsel later dismissed the updating and incentive compensation issues, so that request is moot.

First, Laclede Gas Company argues that Public Counsel was in defiance of the Commission's November 30, 2016, procedural order by raising new issues on the 70th day after the petitions had been filed, which was December 9, 2016. A review of that procedural order shows that the Commission did not direct Public Counsel to file a response to Staff's Recommendation. Rather the Commission ordered that, "Any other party wishing to respond or object to Staff's recommendation shall do so no later than December 9, 2016."⁴ The Commission set no deadline for the filing of objections to the tariff sheets or requests for hearing. Thus, Public Counsel was in compliance with the Commission's procedural order.

Second, Laclede Gas Company argued that Public Counsel should have raised these new issues within the 60-day statutory deadline that Staff is required to follow.⁵ Even though the statute does not set out deadlines for Public Counsel, or any other party or entity other than Staff and the Commission, the statute clearly contemplates

⁴ *Order Establishing Time to Respond to Staff's Recommendation*, File Nos. GO-2016-0332 and GO-2016-0333 (issued Nov. 30, 2016).

⁵ Section 393.1015.2.(1), RSMo (Supp. 2012).

that Public Counsel will be involved in ISRS proceedings since it is required to receive notice of the filings when they are made.⁶ Also, pursuant to Commission Rule 4 CSR 240-2.010(10), absent a filed notice of intent not to participate, Public Counsel is automatically a party to any case before the Commission. If the legislature had intended to mandate a deadline for the Public Counsel's filings, it would have done so in the statute.

Further, although the Commission must complete its order within 120 days of the petition being filed, it is within the Commission's discretion as to whether it holds a hearing in ISRS petitions.⁷ In the current case, the Commission received Public Counsel's objections and determined that there was sufficient time to hold a hearing. A procedural schedule was set and the parties had an opportunity to conduct discovery, file written direct and rebuttal testimony, file an issues list and position statements, have a full opportunity for cross-examination at the evidentiary hearing, and file briefs. Thus, even though the procedural schedule was abbreviated and accommodations had to be made due to holidays, a full hearing was held and due process was served. Therefore, the Commission denies Laclede Gas Company's December 19 motion.

III. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

⁶ Section 393.1015.1.(1), RSMo (Supp. 2012).

⁷ Section 393.1015.2.(3), RSMo (Supp. 2012). ("The commission *may* hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred twenty days after the petition is filed." (Emphasis added)).

1. Laclede is a public utility and gas corporation incorporated under the laws of the state of Missouri. Laclede distributes and transports natural gas to customers in the City of St. Louis and the counties of St. Louis, St. Charles, Crawford, Jefferson, Franklin, Iron, St. Genevieve, St. Francois, Madison, and Butler.⁸

2. MGE is an operating unit of Laclede Gas Company that conducts business in Laclede Gas Company's MGE service territory under the fictitious name of Missouri Gas Energy. MGE is engaged in the business of distributing and transporting natural gas to approximately 500,000 customers in the western Missouri counties of: Andrew, Barry, Barton, Bates, Buchanan, Carroll, Cass, Cedar, Christian, Clay, Clinton, Cooper, Dade, DeKalb, Greene, Henry, Howard, Jackson, Jasper, Johnson, Lafayette, Lawrence, McDonald, Moniteau, Newton, Pettis, Platte, Ray, Saline, Stone, and Vernon.⁹

3. An ISRS is a statutorily authorized rate adjustment mechanism tool utilized by eligible gas corporations to recover the cost of certain infrastructure replacements by establishing and updating a surcharge on a customer's bill.¹⁰ A qualifying gas corporation files an ISRS petition with the Commission seeking authority to recover the depreciation expense and return associated with eligible net plant additions, as well as amounts associated with property taxes for those additions.¹¹

4. Once an ISRS is established, a gas corporation can submit to the Commission a proposed rate schedule changing the ISRS to recover the expense of infrastructure system replacements outside of a formal rate case. The cumulative

⁸ Laclede Exhibit 4; p. 2, ¶ 3-4.

⁹ Laclede Exhibit 5; p. 2, ¶ 4-5.

¹⁰ Staff Exhibit 6, *Rebuttal Testimony of Mark Oligschlaeger*, p. 3, Ins. 7-12.

¹¹ Staff Exhibit 6, p. 3, Ins. 13-15.

revenue requirement for all Commission-approved ISRS updates is then placed on customers' bills before being zeroed out at the next general rate case.

5. Staff performs an ISRS audit when a petition to change an ISRS is filed.¹² By statute, Staff may file a report of its audit within 60 days from the time an ISRS petition is filed.¹³

6. In contrast to the type of audit performed in a general rate case, an ISRS audit is limited in scope to a determination of whether the included projects are ISRS-eligible and whether the calculations were done correctly. While costs of an ISRS project may be included in rates, those costs are still subject to a prudence review in a subsequent rate case. If the costs are found to be imprudent, the amount of ISRS funds collected for the project can be refunded to customers.¹⁴

A. Laclede

7. The Commission approved Laclede's ISRS to go into effect on April 12, 2014, in File No. GO-2014-0212. Laclede's most recent general rate increase was approved by the Commission in File No. GR-2013-0171. Laclede has routinely sought approval to revise its ISRS to include the costs of additional infrastructure system replacements since its last general rate case. The Commission has approved five petitions to change Laclede's ISRS, with the last order approving a change to the ISRS being in File No. GO-2016-0196.¹⁵ The cumulative Commission-approved ISRS amounts are included in Laclede's current ISRS rates.¹⁶

¹² Staff Exhibit 3, *Direct Testimony of David Sommerer*, Schedule DMS-d2.

¹³ Section 393.1015.2(2), RSMo (Supp. 2012).

¹⁴ Sections 393.1009 and 393.1015, RSMo (Supp. 2012).

¹⁵ Staff Exhibit 2, *Direct Testimony of Jennifer K. Grisham*, Schedule JKG-d1, p. 4.

¹⁶ Staff Exhibit 2, Schedule JKG-d1, pp. 4-5.

8. On September 30, 2016, Laclede filed a petition seeking to recover costs for claimed ISRS eligible projects from March 1, 2016 updated through October 31, 2016.¹⁷

9. Laclede attached to its petition supporting documentation for the plant additions completed since the last approved ISRS change.¹⁸ This included documentation identifying the type of addition, utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense.¹⁹ The company also provided estimates of capital expenditures for projects completed through October 2016.²⁰

10. Laclede provided Staff and Public Counsel updated actual cost information for the pro forma figures on October 19 and November 1, 16, 17, and 21, 2016.²¹

11. As part of its audit, Staff reviewed workpapers, a representative sample of work orders, invoices, and other applicable documentation.²² Staff concluded that each of the projects it reviewed met the ISRS rule qualifications.²³ Laclede provided all work order authorizations for work orders over \$50,000.²⁴

12. After performing its audit, Staff filed a recommendation that the Commission approve Laclede's petition for ISRS plant additions from March 1, 2016,

¹⁷ Staff Exhibit 2, Schedule JKG-d1, pp. 4-5; and Laclede Exhibit 4, p. 2.

¹⁸ Laclede Exhibit 4.

¹⁹ Laclede Exhibit 4, Appendix A and B.

²⁰ Laclede Exhibit 4.

²¹ Staff Exhibit 2, Schedule JKG-d1, p. 4.

²² Staff Exhibit 2, Schedule JKG-d1, p. 3.

²³ Staff Exhibit 2, Schedule JKG-d1, p. 3.

²⁴ Laclede Exhibit 2, *Rebuttal Testimony of Glenn W. Buck*, p. 10, lns. 5-10.

through October 31, 2016.²⁵ Staff recommended the Commission approve the inclusion of accumulated depreciation and deferred taxes through December 15, 2016.²⁶

13. Based on its review and calculations, Staff recommended that Laclede receive an additional \$4,504,138 in ISRS revenues.²⁷ This was a different amount than the ISRS-related revenue increase Laclede requested due to Staff recording accumulated depreciation and deferred taxes through December 15, 2016, instead of December 1, 2016, as Laclede had done.²⁸

14. Staff's recommended cumulative amount to be included in ISRS rates was \$29,526,894.²⁹ Staff also submitted a proposed ISRS rate design, which is consistent with the methodology used to establish Laclede's past ISRS rates and is consistent with the method used to establish rates for other gas utilities.³⁰

15. Laclede concurred with and supported Staff's figures.³¹

16. No party disagreed, and the Commission finds, that all the utility plant additions submitted for ISRS classification were in service and used and useful before Staff filed its Recommendation on November 29, 2016.³²

17. Additionally, it is undisputed that all of Laclede's replaced cast iron mains were worn out or deteriorated due to their age.³³

²⁵ Laclede Exhibit 1, *Direct Testimony of Glenn W. Buck*, Schedule GWB-1; and Staff Exhibit 2, Schedule JKG-d1.

²⁶ Staff Exhibit 2, Schedule JKG-d1, p. 4.

²⁷ Staff Exhibit 2, Schedule JKG-d1, p. 4.

²⁸ Staff Exhibit 2, Schedule JKG-d1, p. 4.

²⁹ Staff Exhibit 2, Schedule JKG-d1, p. 5.

³⁰ Staff Exhibit 2, Schedule JKG-d1, pp. 5 and 8.

³¹ Laclede Exhibit 1, p. 3, Ins. 20-22.

³² Laclede Exhibit 2, p. 3, Ins. 6-13.

³³ Transcript p. 149, Ins. 15-18.

18. Public Counsel did object, however, to certain portions of plastic mains and service lines that were replaced, claiming that those were not worn out or deteriorated under the requirements of the ISRS statute.³⁴

19. Laclede determined it needed to replace, along with certain pieces of cast iron and bare steel pipe, the pieces of plastic pipe that had been used as patches to the cast iron pipe and to relocate the mains in easier to access areas.³⁵ The patches of plastic pipe varied from just a few feet to several hundred feet in length.³⁶

20. The plastic pipe that was replaced also varied in age, with some being installed in the 1970s, 1980s, 1990s, 2000s, and 2010s.³⁷

21. Laclede considered that the patches of plastic pipe and the plastic service lines were part of a larger system of pipeline and replaced entire neighborhoods of mains and service lines by running new plastic lines.³⁸ These lines were generally in new locations between the street and the sidewalks for easier access, were buried at a different depth, and required that service lines connect to the main line and enter the customers' buildings in different locations than the old lines.³⁹

22. Because of the scope of the projects, entire neighborhoods had mains and services lines replaced and relocated with the old pipes abandoned in place.⁴⁰ In this

³⁴ File No. GO-2016-0333, Item No. 7, *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing* (filed Dec. 9, 2016).

³⁵ Laclede Exhibit 2, p. 11, In. 20; and Laclede Exhibit 3, p. 10, Ins. 8-10.

³⁶ Laclede Exhibit 3, *Rebuttal Testimony of Mark D. Lauber*, p. 9, Ins. 17-18.

³⁷ OPC Exhibit 1, *Direct Testimony of Charles Hyneman*, Schedules CRH-D-2 and CRH-D-3; and OPC Exhibit 2.

³⁸ Tr. p. 128, Ins. 14-23; and p. 132, Ins. 12-22.

³⁹ Tr. pp. 140-142; and Laclede Exhibit 3, p. 10, Ins. 1-13.

⁴⁰ Laclede Exhibit 3, pp. 10-11.

particular situation, the mains could not be replaced without replacing the service lines.⁴¹

23. Additionally, replacing the plastic pipe was an essential and indispensable step in completing the cast iron and steel main replacement projects.⁴²

24. A majority of the pipeline replaced was cast iron and bare steel pipe.⁴³ Further, more cast iron and plastic in total was removed than new plastic put in place, due to efficiencies in the new placement and type of pipelines.⁴⁴

25. By retiring the newer plastic patches, Laclede reduces the depreciation expenses related to that plastic pipe and customers receive a reduction in ISRS rates accordingly.⁴⁵

B. MGE

26. The Commission approved MGE's current ISRS to go into effect on October 8, 2014.⁴⁶ MGE's most recent general rate increase was approved by the Commission in File No. GR-2014-0007. Since then, MGE has routinely sought approval to revise its ISRS to include the costs of additional infrastructure system replacements. The Commission has approved three petitions to change MGE's ISRS since the last general rate case, with the latest order approving a change to the ISRS being in File No. GO-2016-0197.⁴⁷ The cumulative Commission-approved ISRS amounts are included in MGE's current ISRS rates.⁴⁸

⁴¹ Tr. p. 141, Ins. 12-14; and Laclede Exhibit 3, p. 11, Ins. 11-13.

⁴² Laclede Exhibit 3, p. 9, Ins. 8-10.

⁴³ Tr. p. 128, Ins. 6-9; and Staff Exhibit 5, *Rebuttal Testimony of Kimberly K. Bolin*, pp. 3-4.

⁴⁴ Laclede Exhibit 3, p. 8, Ins. 16-19; and p. 11, Ins. 17-19; and Staff Exhibit 5, p. 3, Ins. 11 and 21; and p. 7.

⁴⁵ Laclede Exhibit 2, p. 11, Ins. 3-14, and Revised Rebuttal Schedule GWB-2.

⁴⁶ The Commission approved Laclede's ISRS in File No. GR-2015-0025.

⁴⁷ Staff Exhibit 1, *Direct Testimony of Caroline Newkirk*, Schedule CNN-d1, p. 4.

⁴⁸ Staff Exhibit 1, Schedule CNN-d1, p. 4.

27. On September 30, 2016, MGE filed a petition seeking to recover costs for claimed ISRS eligible projects from March 1, 2016, updated through October 31, 2016.⁴⁹

28. MGE attached to its petition supporting documentation identifying the type of addition, the utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense.⁵⁰ MGE also provided estimates of capital expenditures for projects completed through October 2016.⁵¹

29. MGE provided Staff and Public Counsel updated actual cost information for the pro forma figures throughout the Staff audit process including on October 10 and November 10, 18, and 21, 2016.⁵²

30. As part of its audit, Staff reviewed workpapers, a representative sample of work orders, invoices, and other applicable documentation.⁵³ Staff concluded that each of the projects it reviewed met the ISRS rule qualifications.⁵⁴ MGE provided all work order authorizations for work orders over \$50,000.⁵⁵

31. After performing its audit, Staff filed a recommendation that the Commission approve MGE's petition for ISRS plant additions from March 1, 2016, through October 31, 2016.⁵⁶ Staff recommended the Commission approve the inclusion of accumulated depreciation and deferred taxes through December 15, 2016.⁵⁷

⁴⁹ Staff Exhibit 1, Schedule CNN-d1, pp. 4-5; and Laclede Exhibit 5, p. 2.

⁵⁰ Laclede Exhibit 5, Appendix A and B.

⁵¹ Laclede Exhibit 5.

⁵² Staff Exhibit 2, Schedule CNN-d1, p. 3.

⁵³ Staff Exhibit 1, Schedule CNN-d1, p. 3.

⁵⁴ Staff Exhibit 1, Schedule CNN-d1, p. 3.

⁵⁵ Laclede Exhibit 2, p. 10, Ins. 5-10.

⁵⁶ Laclede Exhibit 1, Schedule GWB-1; and Staff Exhibit 1, Schedule CNN-d1.

⁵⁷ Staff Exhibit 1, Schedule CNN-d1, p. 4.

32. Based on its review and calculations, Staff recommended that MGE receive an additional \$3,362,598 in ISRS revenues.⁵⁸ This figure includes the correction of a \$72 disposition error in MGE's workpapers.⁵⁹ Additionally, Staff recommended the ISRS-related revenue increase of MGE include accumulated depreciation and deferred taxes through December 15, 2016.⁶⁰

33. Staff's recommended cumulative amount to be included in ISRS rates is \$13,616,021.⁶¹ Staff also submitted a proposed rate schedule, which is consistent with the methodology used to establish MGE's past ISRS rates and is consistent with the method used to establish rates for other gas utilities.⁶²

34. MGE concurred with and supported Staff's figures.⁶³

35. No party disagreed, and the Commission finds, that all the utility plant additions submitted for ISRS classification were in service and used and useful before Staff filed its Recommendation on November 29, 2016.⁶⁴

36. Additionally, it is undisputed that all of MGE's replaced cast iron and bare steel mains were considered to be worn out or deteriorated due to their age.⁶⁵

37. Public Counsel did object, however, to certain portions of plastic mains and service lines that were replaced, claiming that those were not worn out or deteriorated under the requirements of the ISRS statute.⁶⁶ Additionally, Public Counsel

⁵⁸ Staff Exhibit 1, Schedule CNN-d1, p. 4.

⁵⁹ Staff Exhibit 1, Schedule CNN-d1, p. 4.

⁶⁰ Staff Exhibit 1, Schedule CNN-d1, p. 3.

⁶¹ Staff Exhibit 1, Schedule CNN-d1, p. 5.

⁶² Staff Exhibit 1, Schedule CNN-d1, p. 4.

⁶³ Laclede Exhibit 1, p. 3, Ins. 20-22.

⁶⁴ Laclede Exhibit 2, p. 3, Ins. 6-13.

⁶⁵ Tr. p. 149, Ins. 15-18.

⁶⁶ File No. GO-2016-0332, Item No. 8, *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing* (filed Dec. 9, 2016).

objected to certain hydrostatic testing costs as not eligible to be included in MGE's ISRS change request.⁶⁷

38. The company determined it needed to replace, along with certain pieces of cast iron and bare steel pipe, the pieces of plastic pipe that had been used as patches to the cast iron pipe and to relocate the mains in easier to access areas.⁶⁸ The patches of plastic pipe varied in length from just a few feet to several hundred feet in length.⁶⁹

39. The plastic pipe that was replaced also varied in age, with some being installed in the 1970s, 1980s, 1990s, 2000s, and 2010s.⁷⁰

40. MGE considered that the patches of plastic pipe and the plastic service lines were part of a larger system of pipeline and replaced entire neighborhoods of mains and service lines by running new plastic lines.⁷¹ These lines were generally in new locations between the street and the sidewalks for easier access, were buried at a different depth, and required that service lines connect to the main line and enter the customers' buildings in different locations than the old lines.⁷²

41. Because of the scope of the projects, entire neighborhoods had mains and services lines replaced and relocated with the old pipes abandoned in place.⁷³ In this particular situation the mains could not be replaced without replacing the service lines.⁷⁴

⁶⁷ File No. GO-2016-0332, Item No. 8, *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing* (filed Dec. 9, 2016).

⁶⁸ Laclede Exhibit 2, p. 11, Ins. 20; and Laclede Exhibit 3, p. 10, Ins. 8-10.

⁶⁹ Laclede Exhibit 3, p. 9, Ins. 17-18.

⁷⁰ OPC Exhibit 1, Schedules CRH-D-2 and CRH-D-3; and OPC Exhibit 2.

⁷¹ Tr. p. 128, Ins. 14-23; and p. 132, Ins. 12-22.

⁷² Tr. pp. 140-142; and Laclede Exhibit 3, p. 10, Ins. 1-13.

⁷³ Laclede Exhibit 3, pp. 10-11.

⁷⁴ Tr. p. 141, Ins. 12-14; and Laclede Exhibit 3, p. 11, Ins. 11-13.

42. Additionally, replacing the plastic pipe was an essential and indispensable step in completing the cast iron and steel main replacement projects.⁷⁵

43. A majority of the pipeline replaced was cast iron and bare steel pipe.⁷⁶ Further, more cast iron and plastic in total was removed than new plastic put in place, due to efficiencies in the new placement and type of pipelines.⁷⁷

44. By retiring the newer plastic patches, MGE reduces the depreciation expenses related to that plastic pipe and customers receive a reduction in ISRS rates accordingly.⁷⁸

45. Hydrostatic testing is performed for several reasons.⁷⁹

46. Hydrostatic testing is performed on newly installed pipelines to check for leaks.⁸⁰

47. Hydrostatic testing is also performed on old pipeline to check for leaks as part of the company's maintenance or integrity management program.⁸¹

48. The third type of hydrostatic testing is what is at issue in this case. That is, hydrostatic testing that is done on pipe that has already been placed in the ground (generally prior to 1970) and is being tested to establish a baseline maximum pressure.

49. This third type of testing is done only one time. If the testing shows leaking or deterioration the pipe is repaired or replaced (and the cost of testing and repair may or may not be eligible for inclusion in ISRS rates). If there is no problem,

⁷⁵ Laclede Exhibit 3, p. 9, Ins. 8-10.

⁷⁶ Tr. p. 128, Ins. 6-9; and Staff Exhibit 5, pp. 3-4.

⁷⁷ Laclede Exhibit 3, p. 8, Ins. 16-19; and p. 11, Ins. 17-19.

⁷⁸ Laclede Exhibit 2, p. 11, Ins. 3-14, and Revised Rebuttal Schedule GWB-2.

⁷⁹ Tr. p. 145, Ins. 11, through p.146, Ins. 23.

⁸⁰ Tr. p. 145, Ins. 11-14.

⁸¹ Tr. p. 145, Ins. 11-19.

nothing physical occurs. The testing determines the maximum allowable operating pressure and records are kept of that result.⁸²

50. The third type of testing provides confidence to the company that the pipeline is expected to last for an additional period of years. However, no physical changes have been made to the pipe in contrast to relining, insertion, or joint encapsulation projects.⁸³

IV. Conclusions of Law

Laclede and MGE are each a “gas corporation” and a “public utility” as those terms are defined by Section 386.020, RSMo (Supp. 2012). The Commission’s authority is limited to that specifically granted by statute or warranted by clear implication as necessary to effectively render a specifically granted power.⁸⁴ Laclede and MGE are subject to the Commission’s jurisdiction, supervision, control, and regulation, as provided in Chapters 386 and 393, RSMo.

Sections 393.1009 through 393.1015, RSMo (Supp. 2012) (“ISRS statutes”) authorize a gas corporation to establish or change an ISRS rate schedule outside of a general rate case after approval by the Commission. An ISRS is a statutorily permitted form of rate adjustment mechanism that allows a public utility to change rates based on the consideration of a single issue.⁸⁵ Thus, the Commission has the authority under the ISRS statutes to consider and approve ISRS requests such as the ones proposed in the petitions.⁸⁶

⁸² Laclede Exhibit 3, p.5, Ins. 18-21.

⁸³ Tr. p. 121, Ins. 21-22; and pp. 123-124.

⁸⁴ *State ex rel. Int’l Telecharge, Inc. v. Mo. Pub. Serv. Comm’n*, 806 S.W.2d 680, 686 (Mo. App. W.D. 1991).

⁸⁵ *Liberty Energy Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520 (Mo. 2015).

⁸⁶ Laclede Exhibits 4 and 5.

Since Laclede and MGE brought the petitions, they bear the burden of proof.⁸⁷ The burden of proof is the preponderance of the evidence standard.⁸⁸ In order to meet this standard, Laclede and MGE must convince the Commission it is “more likely than not” that its allegations are true.⁸⁹ Section 393.1015.2(4), RSMo (Supp. 2012), states that “[i]f the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, the commission shall enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1009 to 393.1015.”

Eligible Expenses

The first issue for determination is whether the Commission should approve ISRS revenue requirement increases for Laclede and MGE in this case. Public Counsel argues that the Commission should reject the ISRS change petitions because they seek to recover ineligible expenses not authorized by law. These allegedly ineligible expenses were of two types: the replacement of plastic pipe mains and service lines that were relatively new; and hydrostatic testing of plastic pipe to establish a maximum allowable operating pressure (MAOP).⁹⁰

⁸⁷ “The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue”. *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

⁸⁸ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 Mo. banc 1996).

⁸⁹ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109-111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

⁹⁰ *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing*, File Nos. GO-2016-0332 and GO-2016-0333 (filed Dec. 9, 2016).

Section 393.1012.1, RSMo (Supp. 2012), provides that a gas corporation may petition the Commission to change its ISRS rate schedule “to provide for the recovery of costs for eligible infrastructure system replacements.”⁹¹ That term is defined in Section 393.1009(3), RSMo (Supp. 2012) as “gas utility plant projects that: (a) Do not increase revenues by directly connecting the infrastructure replacement to new customers; (b) Are in service and used and useful; (c) Were not included in the gas corporation's rate base in its most recent general rate case; and (d) Replace or extend the useful life of an existing infrastructure.”⁹²

Further, a “gas utility plant project” is defined in Section 393.1009(5), RSMo (Supp. 2012). That section states:

“Gas utility plant projects’ may consist only of the following:

(a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition;

(b) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and

(c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the gas corporation.⁹³

First, Public Counsel argues that Laclede and MGE have not shown that replacing plastic pipe was done “to comply with state or federal safety requirements” because the existing facilities were “worn out or deteriorated.” To determine eligibility,

⁹¹ Emphasis added.

⁹² Emphasis added.

⁹³ Emphasis added.

the Commission must determine if the existing facilities were worn out or deteriorated.⁹⁴ No party disputed that the cast iron and bare steel pipes were considered worn out or deteriorated. The issue is whether certain costs associated with replacing connected plastic mains and service lines at the same time that cast iron and steel mains and service lines are replaced can be recovered through the ISRS.

Staff and Laclede Gas Company witnesses testified that the plastic mains being replaced were interspersed with the cast iron and steel pipe because they had been used to repair earlier problem areas.⁹⁵ Thus, when Laclede and MGE replace the deteriorated and worn out cast iron and steel, some plastic pipe is also incidentally replaced.⁹⁶ Additionally, because of the scope of the projects, entire neighborhoods had mains and services lines replaced and relocated with the old pipes abandoned in place.⁹⁷ The relocation of the mains further necessitated the replacement of the service lines. Even with all of this interrelated replacement, because of the new efficiencies achieved with the type of replacement pipe, the new locations, and abandoning the old pipe in place, more cast iron and plastic pipe in total was retired than new plastic pipe was installed.⁹⁸

The Commission concludes that because the plastic pipe in this case was an integral component of the worn out and deteriorated cast iron and steel pipe, as evidenced by the credible testimony of Staff and Laclede Gas Company witnesses, the cost of replacing it can be recovered.

⁹⁴ *Office of the Public Counsel v. P.S.C.*, 464 S.W.3d 520, 525 (Mo. 2015).

⁹⁵ Laclede Exhibit 3, p. 9, Ins. 10-13.

⁹⁶ Laclede Exhibit 3, p. 9, Ins. 5-7.

⁹⁷ Tr. p. 128, Ins. 14-23; and p. 132, Ins. 12-22; and Laclede Exhibit 3, pp. 10-11.

⁹⁸ Staff Exhibit 5, p. 3, Ins. 11 and 21; p. 7; and p. 9.

This decision can be distinguished from the Commission’s decision to not allow telemetry expenses as part of ISRS because those items were discrete additions to ISRS-eligible projects and were included in the pipeline replacement projects as a matter of convenience.⁹⁹ In contrast, the incidental replacement of plastic pipe connected to cast iron or steel, is not discrete and separate. These plastic pipes that are being replaced were installed to fix an immediate problem and intended to remain until Laclede or MGE could schedule the entire main replacement.¹⁰⁰ The plastic patches are no longer separate and discreet once integrated into the system. Thus, the Commission concludes that once installed, these patches become part of the “facility” that is being replaced.

Furthermore, not allowing recovery of the portions of the main replacement projects that incidentally consist of plastic pipe would be a disincentive to the gas utilities to replace deteriorated pipelines containing portions of plastic.¹⁰¹ Such a disincentive would be particularly troubling in these circumstances as the more patches there are in a pipe, the more vulnerable that pipe is to leaks, which could cause a degradation of safety.¹⁰² Pragmatically, that result would be troubling, but it would also be contrary to the legislative purpose of the ISRS statutes. Therefore, the Commission concludes that each project that replaced cast iron, steel, and plastic pipes contemporaneously were all part of a single segment of pipeline that was worn out or deteriorated.

⁹⁹ *In the matter of the Verified Application and Petition of Laclede Gas Company to Change Its Infrastructure System Replacement Surcharge in Its Laclede Gas Service Territory, and In the Matter of the Application of Laclede Gas Company to Change Its Infrastructure System Replacement Surcharge in Its Missouri Gas Energy Service Territory*, File Nos. GO-2015-0341 and GO-2015-0343, (*Report & Order*, issued Nov. 12, 2015).

¹⁰⁰ Staff Exhibit 5, pp. 5-6.

¹⁰¹ Staff Exhibit 5, p. 5, Ins.10-14.

¹⁰² Tr. p. 135, Ins. 9-23; and Tr. p. 136, In. 22 through p. 138, In. 14.

The hydrostatic testing at issue, however, is not an ISRS eligible expense. Pursuant to Section 393.1009(3), RSMo (Supp. 2012), the first criteria for ISRS eligibility is that it must be a gas utility plant project, the definition of which includes, “Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life. . .” of a pipe.¹⁰³ Laclede argues that hydrostatic testing extends the useful life of a pipe in that the testing provides confidence to the company that the pipeline is expected to last for an additional period of years. However, hydrostatic testing must first qualify as a project similar to main relining, service line insertion, or joint encapsulation before it matters whether useful life is extended.

The evidence shows that nothing physically is added to or taken away from the pipes that are tested.¹⁰⁴ If the testing shows no leaking or deterioration the maximum allowable operating pressure is determined, but nothing further occurs. The testing provides confidence to the company that the pipeline is expected to last for an additional period of years, but without first bearing some similarity to relining, insertion, or joint encapsulation projects, that extra confidence is irrelevant to ISRS eligibility.¹⁰⁵

Consistent with this conclusion, the Federal Energy Regulatory Commission (FERC) has determined that hydrostatic testing does not extend the useful life of a pipeline.¹⁰⁶ That determination was expressly for the purpose of expanding on accounting guidance that had been previously issued in an “accounting release.”¹⁰⁷

¹⁰³ Emphasis added.

¹⁰⁴ Tr. 123.

¹⁰⁵ Tr. 123-124.

¹⁰⁶ *Order on Accounting for Pipeline Assessment Costs*, FERC Docket No. A105-1-000 (issued June 30, 2005) (FERC Order); OPC Exhibit 5.

¹⁰⁷ FERC Order, para. 1.

The FERC order specifically addresses the costs incurred when conducting baseline testing,¹⁰⁸ “The act of inspecting or assessing a pipeline segment does not by itself increase the useful life of a pipeline asset or improve its efficiency.”¹⁰⁹ While the Commission is not bound by the FERC decision, it is a helpful guide in the Commission’s analysis of this issue.

Laclede and MGE have not shown the pipe at issue will last any longer after testing than it would have lasted without. The only thing that has changed is that the company now has knowledge that it did not have previously. Even if the company had shown hydrostatic testing results in longer-lasting pipe, it has not shown that hydrostatic testing meets the definition of an ISRS-eligible project. The Commission concludes that this type of hydrostatic testing is not an ISRS-eligible expense.

V. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law, the Commission finds that the substantial and competent evidence in the record supports the conclusion that Laclede and MGE have met, by a preponderance of the evidence, their burden of proof to demonstrate that the petitions and supporting documentation comply with the requirements of Sections 393.1009 to 393.1015, RSMo (Supp. 2012) with the exception of the hydrostatic testing expense at issue. The Commission concludes that Laclede and MGE shall be permitted to change their ISRS rates to recover ISRS revenues equal to those set out by Staff in its Recommendations, less the hydrostatic testing expenses.

¹⁰⁸ FERC Order, para. 30.

¹⁰⁹ FERC Order, para. 21.

Further, these ISRS revenues shall follow the rate design for each customer class as set out in Appendix B of the Staff Recommendations.

Since the revenues and rates authorized in this order differ from those contained in the tariffs Laclede and MGE submitted with their petitions, the Commission will reject those tariff sheets. The Commission will allow Laclede and MGE an opportunity to submit new tariff sheets consistent with this order. Further, because Public Counsel's objections and request for hearing was not filed until the 70th day of this 120-day proceeding and due to the various state and federal holidays interfering with the hearing schedule, the Commission finds good cause to make this order effective in less than 30 days.¹¹⁰

THE COMMISSION ORDERS THAT:

1. The motions contained in the *Response of Laclede Gas Company in Opposition to OPC's December 9 Motion, or in the Alternative, Motion to Strike Certain Issues* is denied.
2. The January 10, 2017, motion to strike portions of Laclede's brief is denied and the alternate motion to allow OPC to respond is granted.
3. The January 16, 2017, *Laclede and MGE's Motion to Strike and Response to OPC's Motion to Strike* is denied.
4. The tariff sheet filed by Laclede Gas Company for its Laclede service territory on September 30, 2016, and assigned Tariff No. YG-2017-0047, is rejected.

¹¹⁰ In fact, even though the parties were fully aware of the time constraints on the Commission to issue its order within the 120-day statutory period, the parties originally agreed to a procedural schedule providing for a hearing on Jan. 10, 2017, with briefs not filed until Jan. 16, 2017 (the Martin Luther King, Jr. State Holiday). That schedule would have effectively given the Commission only 12 days to prepare this Report & Order, hold a properly noticed meeting to vote on the order, and issue it with a reasonable amount of time to allow for rehearing requests before it became effective.

5. Laclede Gas Company is authorized to adjust its Infrastructure System Replacement Surcharge for its Laclede service territory in an amount sufficient to recover ISRS revenue of \$4,504,138 for File No. GO-2016-0333.

6. Laclede Gas Company is authorized to file composite/cumulative ISRS rates for each customer class consistent with Staff's recommended rate design.

7. Laclede Gas Company shall file a tariff sheet in compliance with this order no later than 1:00 p.m., January 19, 2017.

8. Staff shall review the tariff sheet required by Ordered Paragraph 7 above after it is filed by Laclede Gas Company and file a recommendation as to whether the tariff sheet is in compliance with this order no later than 4:00 p.m., January 20, 2017.

9. Any party wishing to respond or comment on the tariff sheet required by Order Paragraph 7 above shall file its response no later than 4:00 p.m., January 20, 2017.

10. The tariff sheet filed by Missouri Gas Energy, an Operating Unit of Laclede Gas Company on September 30, 2016, and assigned Tariff No. YG-2017-0048, is rejected.

11. Missouri Gas Energy, an Operating Unit of Laclede Gas Company is authorized to adjust its Infrastructure System Replacement Surcharge sufficient to recover revenues of \$3,362,598 less the amount of the hydrostatic testing as set out in this order for File No. GO-2016-0332.

12. Missouri Gas Energy, an Operating Unit of Laclede Gas Company is authorized to file composite/cumulative ISRS rates for each customer class consistent with Staff's recommended rate design method.

13. Missouri Gas Energy, an Operating Unit of Laclede Gas Company shall file a tariff sheet in compliance with this order no later than 1:00 p.m., January 19, 2017.

14. Staff shall review the tariff sheet required by Ordered Paragraph 13 above once it is filed and file a recommendation as to whether the tariff sheet is in compliance with this order no later than 4:00 p.m., January 20, 2017.

15. Any party wishing to respond or comment on the tariff sheet required by Order Paragraph 13 above shall file its response no later than 4:00 p.m., January 20, 2017.

16. This order shall become effective on January 28, 2017.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, and Coleman, CC, concur,
Rupp, C., dissents,
and certify compliance with the provisions
of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 18th day of January, 2017.

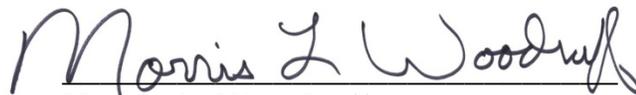
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 18th day of January 2017.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

January 18, 2017

File/Case No. GO-2016-0332 and GO-2016-0333

**Missouri Public Service
Commission**

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**Missouri Public Service
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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.