

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 2nd day of March, 2016.

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-2016-0196**
) Tariff No. YG-2016-0193
)

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-2016-0197**
) Tariff No. YG-2016-0194
)

ORDER GRANTING REQUEST FOR WAIVER

Issue Date: March 2, 2016

Effective Date: March 12, 2016

On February 1, 2016, Laclede Gas Company (“Laclede”) and Missouri Gas Company (“MGE”), an Operating Unit of Laclede Gas Company, filed verified applications and petitions to change their Infrastructure System Replacement Surcharge (“ISRS”) for its Laclede Gas Energy Service Territory (File No. GO-2016-0196) and Missouri Gas Energy Service Territory (File No. GO-2016-0197). In the applications, Laclede and MGE requested a waiver of the requirement of Commission rule 4 CSR 240-4.020(2)¹ to submit notice at least 60 days before the filing of a likely contested case.² The rule further states that any filed case that fails to comply with the 60-day notice requirement shall be rejected

¹ 4 CSR 240-4.020(2) states as follows:

Any regulated entity that intends to file a case likely to be a contested case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case. Such notice shall detail the type of case and issues likely to be before the commission.

² The Commission issued an *Order Directing Notice, Directing Filings and Setting Intervention Deadline* on February 3, 2016. No applications to intervene were received.

by the Commission.³ However, a party may request a waiver of the notice requirement for good cause.⁴ In its application, Laclede states that, “[h]aving just litigated three issues in its previous ISRS case, Laclede does not believe it is likely that this case will be contested. However, out of an abundance of caution, Laclede seeks such a waiver of Rule 4.020.”⁵

On March 10, the Office of the Public Counsel (“OPC”) filed a *Motion to Deny Waiver and Reject ISRS Tariff Filing* (“Motion”) in both Laclede and MGE’s cases. OPC asserts that the companies failed to submit the 60-day notice of their intent to file a likely contested case required by Commission rule 4 CSR 240-4.020(2). OPC argues that Laclede and MGE knew, or should have known, that OPC would contest their applications since the most recent ISRS cases, File No. GO-2015-0341 and File No. GO-2015-0343, were contested cases with an evidentiary hearing. The Commission issued a *Report and Order* on November 12, 2015 in File No. GO-2015-0341 and File No. GO-2015-0343. In that *Report and Order*, the Commission authorized the updating of ISRS-eligible costs after the filing of the applications. Opposing this practice, OPC filed a *Notice of Appeal* in both File No. GO-2015-0341 and File No. GO-2015-0343 on January 15, 2016.

OPC states in its Motion that since the application seeks to include the updated post-application ISRS-eligible costs, Laclede and MGE should have known the application would be contested. The Motion further states that since Laclede and MGE filed a request for a waiver of the notice requirement at the same time they filed the applications, the

³ 4 CSR 240-4.020(2)(A).

⁴ 4 CSR 240-4.020(2)(B).

⁵ File No. GO-2016-0196-EFIS Item No. 1; *Verified Application and Petition of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory and Request for Waiver of Commission Rule 4.020(2)*, ¶ 23. See also MGE’s filing in File No. GO-2016-0197-EFIS Item No. 1; *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 Service Territory and Request for Waiver of Commission Rule 4.020(2)*, ¶ 23.

companies violated the *ex parte* rule and are seeking a retroactive waiver of the violated rule. OPC requests the Commission reject the ISRS tariffs and direct Laclede and MGE to issue a 60-day notice before resubmitting its proposed tariff changes. The Commission does not find OPC's arguments to be persuasive.

Good cause exists to grant Laclede's and MGE's request for a waiver of the 60-day notice requirement. Good cause "generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law."⁶ Similarly, "good cause" has been defined by the courts as a "substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties."⁷

Of course, not just *any* cause or excuse will do. To constitute *good* cause, the reason or legal excuse given "must be real not imaginary, substantial not trifling, and reasonable not whimsical."⁸ Some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.⁹

As Laclede pointed out in its *Response to OPC's Motion to Deny Waiver and Reject ISRS Tariff Filing*,¹⁰ Laclede had no reason to believe OPC would re-litigate the updated post-application ISRS costs issue rather than just reserving its objection to the inclusion in

⁶ *Black's Law Dictionary* 692 (6th ed. 1990). See *State ex rel. Hall v. Wolf*, 710 S.W.2d 302, 303 (Mo. App. E.D. 1986) (in absence of legislative definition, court used dictionary to ascertain the ordinary meaning of the term "good cause" as used in a Missouri statute); *Davis*, 469 S.W.2d at 4-5 (same).

⁷ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective "ordinary person" standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm'n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) ("[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.")

⁸ *Belle State Bank v. Indus. Comm'n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

⁹ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

¹⁰ Laclede filed a response on behalf of itself and MGE.

this application, subject to the outcome of the appeal. OPC filed a *Reply to Laclede's Response to Motion to Deny Waiver and Reject ISRS Tariff Filings* on February 29 asserting that since Laclede believed it could avoid re-litigating the case through a future agreement, Laclede admits knowing an issue would be disputed, therefore requiring the 60-day notice. However, it is reasonable that Laclede and MGE would not anticipate a repeat challenge at the Commission level on inclusion of updated post-application ISRS costs less than three months after the Commission issued a final order on the subject.

The Commission finds good cause exists to grant Laclede and MGE the requested waiver. Laclede represents that the companies have not engaged in any extra record communications on ISRS related issues with any of the Commissioners or their advisory staff during the 60 days before the filing of the applications. Therefore, the intended protection of the 60-day notice requirement-to avoid extra record communication with the Commissioners-is preserved, even though the Commission is granting the requested waiver.

THE COMMISSION ORDERS THAT:

1. The request of Laclede Gas Company's for waiver of Commission rule 4 CSR 240-4.020(2) is granted.
2. The request of Missouri Gas Energy, an Operating Unit of Laclede Gas Company for waiver of Commission rule 4 CSR 240-4.020(2) is granted.

3. This order shall be effective on March 12, 2016.



BY THE COMMISSION

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

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and
Coleman, CC., concur.

Burton, Senior Regulatory Law Judge.