

**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)	

**MOTION TO STRIKE PORTIONS OF LACLEDE'S BRIEF
OR, IN THE ALTERNATE, ALLOW OPC TO RESPOND**

COMES NOW the Office of the Public Counsel ("OPC") and for its Motion to Strike Portions of Laclede's Brief or, in the Alternative, Allow OPC to Respond, states as follows:

1. In its post-hearing brief, Laclede Gas Company ("Laclede") cites to documents not in the record of this proceeding. Page 3 of Laclede's brief argues:

OPC's repeated position is that OPC is subject to that 60 day deadline. Its witness, Mr. Hyneman, has testified to that fact in this case; its attorney Mr. Poston, has argued the point to the Commission, the Western District Court of Appeals and the Missouri Supreme Court. Quotes from this testimony and argument are replicated in Attachment 1 to this brief.

Laclede also included an "Attachment 1" to its brief, which is a mix of Laclede argument and quotes from OPC's filings in the Court of Appeals, Case Number WD79830, and Missouri Supreme Court, Case Number SC96048. The record

evidence before the Commission does not include any filings made to the Court of Appeals or Missouri Supreme Court, and therefore such argument should be stricken from Laclede's post-hearing brief. Laclede did not attempt to introduce these documents into evidence; thereby depriving OPC of an opportunity to object or, at the very least, an opportunity to provide a counterpoint and rebut this evidence per Section 536.070(2) RSMo.

2. In the event the Commission overrules this Motion and allows Laclede's brief to reference extraneous documents, OPC requests the Commission allow OPC to respond since it was denied that opportunity in the evidentiary hearing as Laclede never sought to introduce any appeal documents into the record.

3. In response, OPC requests the Commission also consider Laclede's arguments to the Court of Appeals in Case Numbers WD79349 and WD79830 where Laclede argued, "Staff is the entity specifically designated by the ISRS statute to perform an examination of the ISRS and submit a report regarding that examination", and, "In contrast to Staff, OPC is neither designated to conduct an examination of an ISRS filing nor submit a report. Section 393.1015.2(3), RSMo."

Laclede filed the latter argument with the Court of Appeals on December 28, 2016. In Laclede's brief to the Commission filed last week in the present case, Laclede referred to OPC's hearing request as "OPC's late report." In other words, Laclede is now attempting to label OPC's hearing request as a "report" under the ISRS statutes, yet a week prior Laclede argued to the Court of Appeals that OPC was not

designated to file a report. Laclede cannot have it both ways, and is clearly making contradictory, disingenuous arguments to either this Commission or to the Court.

4. In addition, Laclede drastically mischaracterized OPC's arguments.

Laclede cites to two documents. First, Laclede states:

OPC BRIEF TO WESTERN DISTRICT - ISRS 2 APPEAL CASES - 10/27/16 As another example, in OPC's second appeal of the ISRS update issue, OPC filed a BRIEF on October 27, 2016, stating that "The ISRS statutes include a sixty-day review process with an additional sixty-days for the PSC to conduct a contested hearing if necessary." (Case No. WD79830, OPC Brief, p. 28) OPC also stated that the "Legislature created a mechanism for public participation when it established a sixty-day review period and mandated the petitioning utilities serve OPC with the petition, rate schedules, and supporting documentation." (Id. at p. 34)

OPC is clearly referring to the statutorily-prescribed Staff review and makes no reference whatsoever to the ISRS statute placing any restriction on when OPC may raise issues. There is no question the statute places a 60-day requirement for the Staff to file a report. But even the Staff is not restricted as to when it may raise an issue or request an evidentiary hearing, and is limited only by when it must file a report. Had the Legislature intended the meaning Laclede now places on the ISRS statutes, the ISRS statute would state that the Staff and/or OPC have 60-days to raises issues to the Commission or request an evidentiary hearing. Instead, the ISRS statutes require only the filing of a report that, by definition, is a "formal account", and does not place any restrictions on when any party may raise an issue or request a hearing within the 120-day Commission review period.

5. Laclede also quotes from OPC's Application for Transfer filed with the Missouri Supreme Court, which Laclede incorrectly claims is from an OPC Brief before the Supreme Court. Laclede's Attachment 1 states:

OPC BRIEF TO MISSOURI SUPREME COURT – NOV. 16, 2016

“The PSC allowed Laclede...to wait and provide its supporting documentation for \$20 million in costs just 17 days before the statutorily established sixty-day review period ended. Laclede's late submission denied the PSC, the PSC Staff and the public's representative, OPC, the statutorily prescribed opportunity to review such costs.”

Nowhere does OPC make the claim that the Staff's 60-day review prevents OPC from raising issues the Staff failed to properly identify in its report. OPC only states that the Commission and parties should not be provided *less* than the time allotted for the Staff to file a report.

6. Any reasonable person could note the language referred to by Laclede does not support its assertion that "*OPC's repeated position is that OPC is subject to that 60 day deadline.*" The evidence on the record before the Commission in this case, or any case, does not support Laclede's claims.

WHEREFORE, the Office of the Public Counsel moves the Commission to strike portions of Laclede's post-hearing brief that refer to and cite to documents not in the record before the Commission; or alternatively, accept this response to those out-of-record documents and Laclede's associated arguments.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston
Marc D. Poston (#45722)
Chief Deputy Counsel
P. O. Box 2230
Jefferson City MO 65102
(573) 751-5558
(573) 751-5562 FAX
marc.poston@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 10th day of January 2017.

/s/ Marc Poston
