

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of Laclede )  
Gas Company to Change Its Infrastructure ) **Case No. GO-2016-0196**  
System Replacement Surcharge in Its )  
Laclede Gas Service Territory )

In the Matter of the Application of Laclede )  
Gas Company to Change Its Infrastructure ) **Case No. GO-2016-0197**  
System Replacement Surcharge in Its )  
Missouri Gas Energy Service Territory )

**POST-HEARING BRIEF OF STAFF**

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**Background**

On February 1, 2016, Laclede Gas Company (“Laclede”) filed its *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)* with the Missouri Public Service Commission (“Commission”).<sup>1</sup> Laclede’s Application included ISRS investments for the period from September 1, 2015 through December 31, 2015, as well as pro-forma (budgeted) ISRS costs updated through February 29, 2016.<sup>2</sup> Also on February 1, 2016, Missouri Gas Energy (“MGE”), an operating unit of Laclede, filed its *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 and Request for Waiver of Commission Rule 4.020(2)* with the Commission.<sup>3</sup> MGE’s Application also included ISRS investments for the period from

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<sup>1</sup> Ex. 5, Schedule BW-d2, p. 1.

<sup>2</sup> *Id.*

<sup>3</sup> Ex. 7, Schedule JKG-d1, p. 1.

September 1, 2015 through December 31, 2015, as well as pro-forma (budgeted) ISRS costs updated through February 29, 2016.<sup>4</sup>

Pursuant to the Commission's *Order Directing Notice, Directing Filings and Setting Intervention Deadline* issued in both Case Nos. GO-2016-0196 and GO-2016-0197 on February 3, 2016, the Commission's Staff filed its recommendation in both cases on April 1, 2016.<sup>5</sup> The Office of the Public Counsel ("OPC" or "Public Counsel") filed a *Motion for an Evidentiary Hearing* in both cases on April 11, 2016. Pursuant to the Commission's *Order Scheduling Joint Evidentiary Hearing and Setting Procedural Schedule* issued on April 12, 2016, a joint hearing was held in these cases on April 26, 2016, and post-hearing briefs are due on May 4, 2016.

### **Introduction**

There is only one issue in these cases, which is set forth in the Argument section below. The Commission decided this issue less than six months ago, and should reach the same decision in these cases as it did previously.

The Commission should recognize that the "rate design" of the ISRS rates, or calculation of the actual ISRS rates, is not contested. OPC did not address the issue of rate design, and Mr. Buck -- who testified on behalf of both Laclede and MGE -- testified "in support of the accuracy and results of the Staff Recommendation and Memorandum" which Staff filed on April 1, 2016, in both Case Nos. GO-2016-0196 and GO-2016-0197 and expressed his concurrence in both Staff Recommendations.<sup>6</sup> Therefore, Staff's recommended rate design, and resulting rates, which are set forth on

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<sup>4</sup> *Id.* at pp. 1 -2.

<sup>5</sup> Copies of the staff recommendations are contained on Ex. 5, Schedule BW-d2, Appendices A and B, and Ex. 7, Schedule JKG-d1, Appendices A and B.

<sup>6</sup> Ex. 3, pp. 3- 4.

Exhibit 6 (Appendix B of Schedule DMS-d2) for Case No. GO-2016-0196 and on Exhibit 8 (Appendix B of Schedule DMS-d2) for Case No. GO-2016-0197 is uncontested and should be adopted by the Commission.

One other matter which the Commission should keep in mind is the effective date of the tariffs resulting from these cases. Section 393.1015.3, RSMo, provides that “A gas corporation may effectuate a change in its rate pursuant to the provisions of this section no more often than two times every twelve months.” In footnote 7 of its *Report and Order* in Laclede and MGE’s last ISRS cases, issued on November 12, 2015, in Case Nos. GO-2015-0341 and GO-2015-0343, the Commission stated that “Section 393.1015.3 allows a gas corporation to change its ISRS rates no more than two times every twelve months.” Laclede’s ISRS rates changed on May 22, 2015 and December 1, 2015.<sup>7</sup> Similarly, MGE’s ISRS rates changed on the same dates.<sup>8</sup> Therefore, based on both Laclede’s and MGE’s previous ISRS rate changes and the statute quoted above, Staff recommends that the tariffs resulting from these cases should not be allowed to go into effect prior to May 23, 2016.<sup>9</sup>

### Argument

**Issue:** May Laclede and MGE’s ISRS filings be updated<sup>10</sup> during the ISRS case to replace two months of budgeted ISRS investments with updated actual ISRS investments?

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<sup>7</sup> Ex. 6, Schedule DMS-d2, p. 2.

<sup>8</sup> Ex. 8, Schedule DMS-d2, p. 2.

<sup>9</sup> Ex. 6, Schedule DMS-d2, p. 5; Ex. 8, Schedule DMS-d2, p. 4.

<sup>10</sup> Staff would note that during the course of these cases, the terms “update” and “true-up” have sometimes been used interchangeably. As stated in Mr. Oligschlaeger’s rebuttal testimony, “In the context of an ISRS audit, a “true-up” is an audit procedure involving review of financial information not available at the time of the initial utility rate application. A true-up [in this context] is essentially a review of updated information submitted during the course of an ISRS audit.” Ex. 9, p. 4.

Yes, as long as Staff has a reasonable opportunity to review the updated information. The Commission decided this exact issue less than six months ago in its *Report and Order* issued on November 12, 2015, in Laclede and MGE's last ISRS cases, Case Nos. GO-2015-0341 and GO-2015-0343. Nothing in the applicable statutes or rules has changed regarding this issue since that *Report and Order*. Nothing of any substance has changed. The Commission should reach the same decision in these cases as it did less than six months ago in the prior cases.

Laclede and MGE filed these ISRS rate applications on February 1, 2016, based on actual ISRS-eligible plant expenditures from September 2015 through December 2015; in addition, the initial filings were also based upon budgeted ISRS-eligible plant additions through the end of February 2016.<sup>11</sup> Therefore, both Laclede and MGE were seeking a true-up (or update) of ISRS plant covering the months of January and February 2016.<sup>12</sup> Staff received the necessary supporting ISRS information concerning the January-February plant additions no later than March 9, 2016 – 23 days prior to the due date of Staff's recommendation filing on April 1, 2016.<sup>13</sup> Mr. Wells, Ms. Grisham, and Mr. Oligschlaeger each testified that this was an adequate amount of time to review the updated information prior to the filing of the Staff recommendation.<sup>14</sup> Accordingly, Staff's recommended ISRS-related revenue requirements (which Laclede and MGE support) are based on the actual updated amounts, rather than on any budgeted amounts.

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<sup>11</sup> Ex. 9, p. 5.

<sup>12</sup> *Id.*

<sup>13</sup> *Id. at 6.*

<sup>14</sup> Ex. 5, p. 2; Ex. 7, p. 2; Ex. 9, p. 6.

In its November 12, 2015 *Report and Order* in the previous Laclede and MGE ISRS cases (Case Nos. GO-2015-0341 and GO-2015-0343) the Commission addressed exactly the same issue that is involved in these cases, and under the *Conclusions of Law* section of the *Report and Order* concluded as follows on pages 17 - 19:

OPC contends that the ISRS applications filed on August 3 by both Laclede and MGE do not meet the statutory requirement of section 393.1015.1(1), RSMo since they fail to provide supporting documentation of actual work completed in the months of July and August. Instead, both Laclede and MGE submitted estimates of budgeted infrastructure expenses for July and August with the petitions filed on August 3.

Section 393.1015.1(1), RSMo states that:

At the time that a gas corporation files a petition with the commission seeking to establish or change an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules, and its supporting documentation.

The Commission must therefore determine if the ISRS statute restricts what is recoverable to those projects completed and documented prior to the filing of an ISRS petition. The statutory language is designed to ensure that meaningful information is provided that allows a determination of the eligibility of projects for inclusion in an ISRS. Commission rule 4 CSR 240-3.265(20) identifies what documentation should be provided at the time a natural gas utility files a petition seeking to change an ISRS. Subsection (L) of the regulatory section states that:

For each project for which recovery is sought, the statute, commission order, rule, or regulation, if any, requiring the project, a description of the project, the location of the project, what portions of the project are completed, used and useful, what portions of the project are still to be completed, and the beginning and planned end date of the project.

**Budgeted project information meets the statutory and regulatory requirement for the initial petition filing. So long as Staff has sufficient time to perform an effective review of ISRS eligibility within**

the sixty days allowed by the ISRS statute, the budgeted July and August documents, along with the actual expense records provided after the filing of the petitions are acceptable. (Emphasis added)

\* \* \*

**The statutory language requiring companies submit “supporting documentation” with their proposed ISRS rate schedules does not prohibit the use of budgeted information.** Similar to a true-up in a general rate case, Laclede and MGE replaced the budgeted calculations with information on actual costs. (Emphasis added)

The foregoing quotation from the last Laclede/MGE ISRS cases clearly shows that (1) the Commission decided this exact issue in the prior cases less than six months ago and (2) that the Commission’s decision was that the updating/true-up process complies with both the applicable statutes and rules, as long as the Staff has adequate time to review the updated information. As referenced above, Mr. Wells, Ms. Grisham, and Mr. Oligschlaeger each testified that there was adequate time for Staff to review the updated information. Mr. Hyneman of the Office of the Public Counsel – the only witness to state otherwise – admitted that he did not even perform an audit in these cases.<sup>15</sup>

At the hearing Mr. Hyneman admitted that when he was a member of the Commission Staff he performed or supervised ISRS audits which included the same update process at issue in these cases.<sup>16</sup> In addition, Mr. Oligschlaeger testified that Staff witnesses are not forced to testify to positions with which they personally disagree.<sup>17</sup> Furthermore, the Commission should recall that Staff does not limit its use of “true-up” information in ISRS cases to updates of plant-in-service; rather,

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<sup>15</sup> Tr. p. 174. Furthermore, since Mr. Hyneman did not even conduct an audit in these cases, there is no evidence of an actual impediment to Public Counsel’s ability to conduct discovery of the updated project information submitted by Laclede and MGE, similar to one of the Commission’s conclusions in the previous Laclede and MGE ISRS cases. See page 20 of the November 12, 2015 *Report and Order* in Case Nos. GO-2015-0341 and GO-2015-0343.

<sup>16</sup> Tr. 159 – 163.

<sup>17</sup> Tr. 150.



Staff employs a standard practice of updating the accumulated depreciation reserve and accumulated deferred income tax reserve associated with ISRS plant additions past the cut-off date used by the utilities in their initial filings, which has the effect of reducing rate base and offsetting to some degree the rate impact of inclusion of ISRS-eligible plant additions.<sup>18</sup> As testified by Mr. Buck, Mr. Hyneman does not take issue with this updating practice.<sup>19</sup>

At pages 13 -15 of his direct testimony Mr. Hyneman addresses the topic of prudence reviews of ISRS plant additions. However, his testimony is either misleading, or simply wrong, regarding prudence reviews. First, he expresses his opinion that Staff should review ISRS plant costs for prudence as part of the ISRS audit scope. However, this is not permitted under the applicable statute. Section 393.1015, RSMo, provides in pertinent part that:

2. (2) The staff of the commission may examine information of the gas corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1009 to 393.1015, and to confirm proper calculation of the proposed charge, and may submit a report regarding its examination to the commission not later than sixty days after the petition is filed. **No other revenue requirement or ratemaking issues may be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of sections 393.1009 to 393.1015.** (Emphasis added)

\* \* \*

8. Commission approval of a petition, and any associated rate schedules, to establish or change an ISRS pursuant to the provisions of sections 393.1009 to 393.1015 shall in no way be binding upon the commission in determining the ratemaking treatment to be applied to eligible infrastructure system replacements **during a subsequent general rate proceeding when the commission may undertake to review the prudence of such costs.** In the event the commission disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible infrastructure system replacements previously included in an

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<sup>18</sup> Ex. 9, p. 6.

<sup>19</sup> Ex. 4, p. 2.

ISRS, the gas corporation shall offset its ISRS in the future as necessary to recognize and account for any such overcollections. (Emphasis added)

This statute indicates that prudence *may* be examined (although it is not required) in a subsequent general rate case, but not in the ISRS case itself. As the Commission itself stated in the *Conclusions of Law* section on page 14 of the *Report and Order* in the last Laclede and MGE ISRS cases, “An ISRS is a single issue ratemaking tool authorized by statute that allows rates to be changed based on a consideration of only a single factor. Similar to a fuel adjustment clause, **it is not intended to address every variable that impacts a utility’s rates or its return on equity.**” (Emphasis added) Furthermore, as Mr. Oligschlaeger testified, it simply is not feasible to perform prudence reviews of ISRS plant additions as part of the ISRS case reviews.<sup>20</sup>

Regarding prudence reviews of ISRS plant additions in general rate cases, such review would be triggered by the same considerations applicable to non-ISRS plant additions, such as unusually high costs – i.e., some reason to do so other than simply being ISRS plant.<sup>21</sup> Given the thousands of plant-in-service projects completed each year by the state’s major utilities, performing prudence reviews of plant costs on anything other than an “as needed” basis would impose serious resource and time commitment burdens on Staff in general rate case proceedings.<sup>22</sup> For this reason, plant prudence reviews have been targeted toward high-dollar construction projects with a significant rate impact (most frequently, major electric generating unit additions) or when Staff is aware of a situation in which there is some likelihood of imprudence involving a

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<sup>20</sup> Ex. 9, p. 8.

<sup>21</sup> Ex. 9, p. 10.

<sup>22</sup> Ex. 9, p. 9.

specific plant addition.<sup>23</sup> However, as stated previously, ISRS plant is treated the same as non-ISRS plant when it comes to prudence reviews in general rate cases.

As for Mr. Hyneman's claim that Staff's witness in the last Laclede and MGE ISRS cases testified incorrectly regarding the matter of prudence reviews in general rate cases, Mr. Hyneman is simply stretching. As Mr. Oligschlaeger testified,

Her response simply indicates agreement that the focus of Staff's review of ISRS costs in an ISRS audit concerns whether the underlying plant addition is eligible for early inclusion in rates under the ISRS statute and rule, and not on questions regarding the prudence of plant expenditures. Further, I interpret Ms. Carle's response as clarifying that any prudence review of ISRS costs would occur, if deemed necessary and appropriate, in a general rate case and not in the ISRS application itself.<sup>24</sup>

In the end, Public Counsel has provided nothing new that should cause a different result than that reached by the Commission in Case Nos. GO-2015-0341 and GO-2015-0343. Section 393.1015.1, RSMo, does not state that the Company's supporting documentation cannot contain "budgeted" information which is later updated with actual amounts. Staff would also note that true-up/update procedures are a long-accepted feature included in many general rate cases even though there is no explicit discussion of such procedures in the applicable general rate case statute, similar to the situation with the ISRS statute. Given that the intent of the ISRS statutes (Sections 393.1009 through 393.1015, RSMo) appears to have been to provide for faster recovery of eligible investment than would otherwise be allowed<sup>25</sup>; given that both Laclede and MGE included the budgeted amounts in their filings; and given that Staff was provided with the actual updated amounts in sufficient time to review the updated

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<sup>23</sup> *Id.*

<sup>24</sup> Ex. 9, pp. 10 – 11.

<sup>25</sup> In the *Report and Order* in Case Nos. GO-2015-0341 and GO-2015-0343, the Commission stated on page 18 that "The purpose of the ISRS statute is to allow gas corporations to more timely recover costs for specific infrastructure replacements."

information and file its recommendations on time, Staff recommends including the actual January and February ISRS investments in these cases.

### **Conclusion**

For the reasons set forth in this brief and in Staff's Exhibits in this case, the Commission should issue an order adopting Staff's recommendations as filed in both of these cases on April 1, 2016.

**WHEREFORE**, Staff respectfully submits this Post-Hearing Brief for the Commission's consideration.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record this 4<sup>th</sup> day of May 2016.

**/s/ Jeffrey A. Keevil**