

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

In the Matter of the Application of)	
Laclede Gas Company to Change its)	Case No. GO-2016-0196
Infrastructure System Replacement)	Tariff Filing No. YO-2016-0193
Surcharge in its Laclede Gas Service)	
Territory.)	

In the Matter of the Application of)	
Laclede Gas Company to Change its)	Case No. GO-2016-0197
Infrastructure System Replacement)	Tariff Filing No. YO-2016-0194
Surcharge in its Missouri Gas Energy)	
Service Territory.)	

**BRIEF OF THE OFFICE
OF THE PUBLIC COUNSEL**

The Office of the Public Counsel ("OPC") respectfully requests the Missouri Public Service Commission ("Commission") approve in part and reject in part the Infrastructure System Replacement Surcharge ("ISRS") petitions of Laclede Gas Company ("Laclede") for its Laclede Gas and Missouri Gas Energy ("MGE") operating divisions (All entities will be referred to as "Laclede" unless special notation must be made for MGE). The issue is whether it is lawful and reasonable for Laclede to recover through the ISRS costs that are not known and measurable at the time its ISRS petitions are filed. OPC asserts the Laclede/Staff ISRS practice is both unlawful and unreasonable. OPC does not oppose approval of Laclede's eligible ISRS expenses incurred through December 31, 2015 and supported with documentation filed with the petition but OPC urges the PSC to reject the January and February 2016 costs not properly supported by documentation filed with the petition.

1. **Determining the Reasonableness of the Petitions: Facts the Commission was Unaware of in Laclede's Last ISRS Petitions**

During the evidentiary hearing's opening statements, Laclede and the Commission's Staff ("Staff") argued OPC is simply making the same arguments it made in Laclede's last ISRS petitions; cases now pending review before the Missouri Court of Appeals.¹ As this brief demonstrates, OPC's arguments and evidence in this case are remarkably different and address specific areas where necessary relevant facts were not presented in Laclede's last ISRS petition.

It is apparent the Commission was not aware of many relevant facts regarding the extent of the Staff's review of ISRS costs in ISRS petitions and rate cases. Specifically, the evidence in this case demonstrates Laclede's ISRS petitions receive no meaningful audit of the tens of millions of dollars in costs Laclede claims are eligible. The evidence in this case shows the Staff did not conduct a proper audit because the Staff reviews only summary sheets and a few invoices rather than actual work orders. Further, the Staff provides no review during subsequent rate cases in addition to the previous ISRS petition cost review. The evidence also shows Staff did not *begin* its audit until two weeks before the audit results were due despite having sixty-days to conduct the audit. The Staff explained this was due to a strain on Staff's resources. These are a few examples of relevant facts, addressed in greater detail below, that were not presented to the Commission in Laclede's last ISRS petitions.

Had the Commission been aware of these relevant facts, OPC believes the Commission would have found the extent of the Staff's review unreasonable and would not have allowed Laclede's update practice to continue. OPC has identified three pivotal

Commission findings in the last case disproven by the facts in this case and warrant a revisit by the Commission.

Erroneous Finding No. 1: “*Staff had sufficient time to conduct a review of the work papers and work orders associated with the true-up information*”

In the last ISRS cases, the Commission found “*Staff had sufficient time to conduct a review of the work papers and work orders associated with the true-up information,*”² which was based in part upon the Commission’s additional finding, “*Staff states that it had sufficient time after receiving the updated information to perform the examinations allowed by section 393.1015.2(2) RSMo.*”³ In the present case, the Staff’s testimony shows there was not sufficient time to conduct a review of the work papers and work orders associated with the January and February 2016 costs.

In the evidentiary hearing, Commission Chairman Daniel Hall questioned Staff counsel during opening statements and Staff counsel agreed if Staff does not have sufficient time to review for eligibility, “that is something for [the Commission] to consider when determining whether or not the statute has been complied with.”⁴ As shown below, the Staff testified on several occasions how its review was limited due to Staff not having sufficient time. In this case, as opposed to the last case, the Commission is better informed of the limited extent of the audit conducted in ISRS cases before it.

The Legislature was well-aware of the Commission’s twenty-day discovery turnaround requirement when it set sixty-days as the time between the filing of the

¹ Commission Case Nos. GO-2015-0341 and GO-2015-0343; and Appeal No. WD79349.

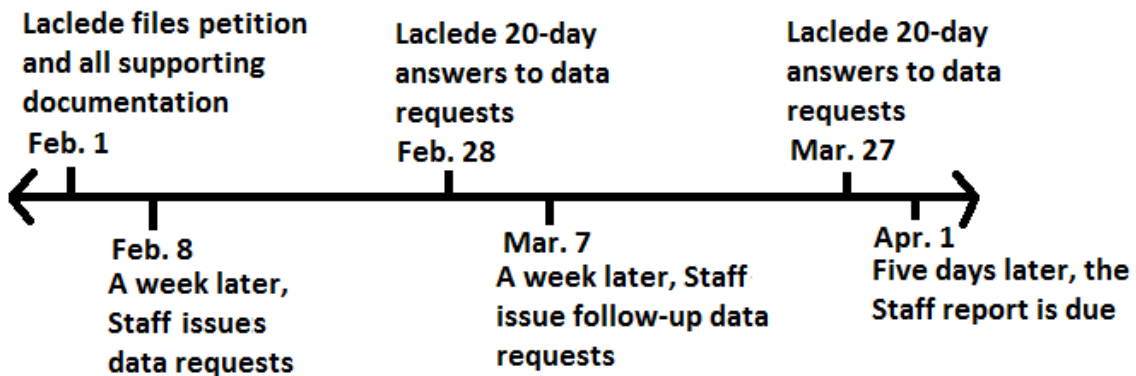
² *Report and Order*, Case Nos. GO-2015-0341 and GO-2015-0343, p.11, 13-14.

³ *Id.*, p.19.

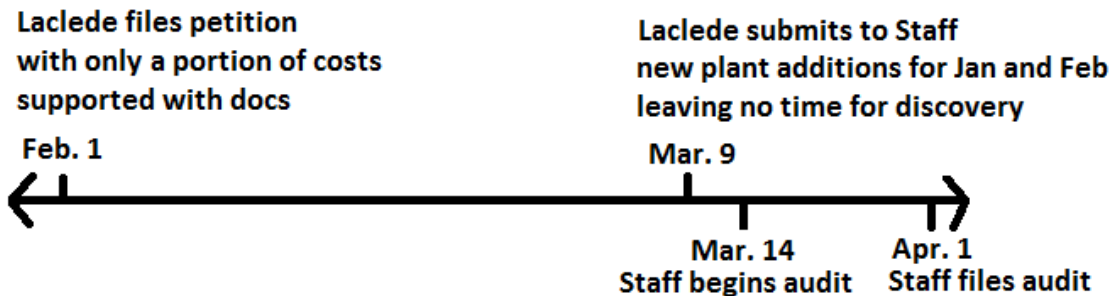
⁴ Transcript (“Tr.”) p. 26.

supporting documents and the filing of the Staff’s audit and recommendation.⁵ Sixty days barely enables an auditor to: (1) issue data requests within a week; (2) receive responses twenty days later; (3) review those responses and submit follow-up data requests within a week; (4) receive responses twenty days later; and (5) have less than a week to complete the audit. This is how the ISRS audit was designed to function. The diagram below compares a timeline providing the Staff and OPC with two rounds of discovery on all the company’s claimed ISRS costs to the timeline followed by Laclede and Staff that does not contemplate discovery on the majority of claimed ISRS costs.

ISRS Audit Procedure Contemplated by Section 393.1015



ISRS Audit as Interpreted by Laclede/Staff



⁵ “When enacting changes to statutes, the legislature is presumed to understand the state of the law at the time of its enactment.” *Mills v. Director of Revenue*, 964 S.W.2d 873 (Mo. Ct. App. 1998).

The first clear indication of a problem with the Staff's ability to conduct an audit within sixty-days is the time spent on the audit. Laclede filed the petitions on February 1, 2016, but the Staff did not begin its audit until at least forty-two days into the sixty-day audit period.⁶ When asked about the delayed start date, Staff's auditor Mr. Brian Wells, explained "[m]y review, due to other casework, actually began, roughly, I would say, the week of March 14th."⁷ Due to Staff's work in other cases, the Staff gave itself only two weeks to complete the entire audit. This late start essentially erased any ability by the Staff to provide a thorough review, to issue data requests and receive responses during the audit period since Laclede would have had twenty days to respond to any Staff data requests,⁸ putting the responses past the April 1, 2016 due date for the Staff's audit.

The limited documents Staff reviewed also show they did not have sufficient time to review the January and February 2016 update months. Rather than look at original source documents such as work orders, the Staff's entire review of the January and February 2016 costs for Laclede Gas, with the exception of *two* invoices, consisted of reading its Work Order Authorization Sheets ("face sheets") and work paper calculations.⁹ Staff's audit did not review the actual work orders, which distinguishes this case from the Commission's prior ISRS case where the Commission found the work orders were analyzed.¹⁰ Asked why Staff did not review the actual work orders in the present case, Mr. Wells testified "it's a voluminous amount of documentation and I was

⁶ Tr. 85; Staff witness Ms. Jennifer Grisham testified her audit mirrored Mr. Well's audit, Tr. 121.

⁷ *Id.*

⁸ 4 CSR 240-2.090(2)(C).

⁹ Tr. 87.

¹⁰ Tr. 88; *Report and Order*, Case Nos. GO-2015-0341 and GO-2015-0343, p.11, 13-14.

not instructed to...try to acquire those for this case.”¹¹ It is not surprising the Staff’s position is each auditor had sufficient time to audit Laclede’s ISRS since what the Staff considers a proper audit is a minimal review of a handful of unverified face sheets.

The Staff’s Auditing Department Manager, Mr. Mark Oligschlaeger, also provided support for the conclusion Staff had insufficient time to review the January and February 2016 costs. Asked if he recommends looking at each project during an ISRS petition audit, he testified “that would not typically be my recommendation, given the limited time to perform our audit.”¹² This leads to the obvious conclusion that if Laclede did not dump two months of additional costs onto Staff in the middle of the audit period, the Staff would have time to review more of the projects that were lawfully included in the petition. Mr. Oligschlaeger also testified that at one time the “established Staff practice and policy” was to review the additional update costs “when we had sufficient time and resources to accommodate them.”¹³ By this testimony, the Staff has accepted the idea that reviews of additional costs are conducted only if there is time.

The following questions and answers from the evidentiary hearing provide support for a conclusion Staff does not have sufficient time to audit the update months in addition to its review of the costs included in the petition. The first question was a follow-up to Mr. Oligschlaeger’s statement that Staff had “limited time” to perform its audit:

Q. And when you say "limited time," are you referring to the 60 days provided in the statute or the two-week audit that your auditors actually performed?

A. Well, we have 60 days by statute to perform whatever audit and review we are able to. The reality is, because of other rate casework

¹¹ Tr. 88.

¹² Tr. 124.

¹³ Tr. 125.

loads, sometimes we have to concentrate our efforts in a smaller period of time than the full 60 days.

Q. So I guess timing and resource[s]...dictates the quality of the audit?

A. Well, if you have a full 60 days, you certainly have the ability to perform more audit steps and procedures than what you have with a smaller time frame. So but even in the smaller time frame you try to accomplish what you have to accomplish.¹⁴

The testimony from the Manager of the Staff's Auditing Department, "*if you have a full 60 days, you certainly have the ability to perform more audit steps and procedures than what you have with a smaller time frame,*" shows how compromised and limited the audit process has become. Giving the auditors the full sixty-days allows for "more audit steps and procedures" and better enables the auditor to review the majority of work orders as opposed to the face sheets that do not have necessary detail.

Mr. Oligschlaeger testified work orders, as opposed to the face sheets, are "voluminous documentation entailing how the various cost components of a plant project were calculated and put together."¹⁵ The regulatory law judge then asked Mr. Oligschlaeger if he thought Staff auditors should review the actual work orders. Mr. Oligschlaeger testified, "[m]y view is that it is nice to the extent there is time and resources available to at least do a limited sample of actual work orders. That is not always possible given the time and resource limitations."¹⁶ Staff's consistent explanation for its very limited review procedure is insufficient time.

¹⁴ Tr. 128.

¹⁵ Tr. 131.

¹⁶ Tr. 139.

OPC's witness in this case, Mr. Charles Hyneman, is a Certified Public Accountant with extensive experience conducting audits of public utility companies, including ISRS audits.¹⁷ Mr. Hyneman did not testify in Laclede's last ISRS case and his testimony provides a perspective not available to the Commission previously. Mr. Hyneman testified, consistent with the cross-examination testimony from the Staff's witnesses, sixty days "is not sufficient to adequately perform an audit if the petition is allowed to be updated during the very limited ISRS audit period."¹⁸

The facts reveal two Staff auditors admitting additional time to perform the audit would enable the Staff to provide a more thorough review of costs not otherwise considered yet, for unexplained reasons, the Staff continues to hold fast to its position that its ISRS audits are sufficient. For the ratepayers footing the bill for the ISRS costs, the Commission's Staff's audit is woefully inadequate and does not provide any meaningful ratepayer protections. The evidence supports a finding that the Staff does not have sufficient time to perform a thorough audit even of the costs for September 2015 through December 2015 included in the petition. This further leads to the conclusion that, if the Staff cannot properly audit the costs included in the petition, the Staff certainly has no time to audit the costs added to the petition in the middle of the audit period.

Erroneous Finding No. 2: "Staff's auditing unit reviewed all supporting work papers, work orders, and other documentation provided by Laclede"

In Laclede's last ISRS petitions, the Commission held "*Staff's auditing unit reviewed all supporting work papers, work orders, and other documentation provided by*

¹⁷ Hyneman Direct Testimony, Exhibit ("Ex."), 10, pp. 1-2.

¹⁸ *Id.*, p.7.

Laclede.”¹⁹ This finding from the last ISRS case would lead one to believe Staff performed a thorough audit consistent with Generally Accepted Auditing Standards (“GAAS”).²⁰ It became clear during the evidentiary hearing in the present case the Staff did not review a single work order.²¹ Instead, the Staff’s review of Laclede’s ISRS petitions was limited to only a handful of work authorization face sheets, work papers showing Laclede’s calculations, seven invoices for Laclede Gas, and six invoices for MGE.²² This is the extent of the Commission’s audit of over **\$35 million** of costs Laclede claims are eligible for the ISRS.²³ From the perspective of the public, this is unacceptable.

An ISRS petition audit should review all, or substantially all, of the plant work orders to ensure they meet ISRS eligibility requirements and the auditor should “confirm the proper calculation of the financial return on the plant (interest expense and shareholder profit), determine the appropriate depreciation rates, determine eligibility for bonus depreciation, calculate depreciation expense, calculate the depreciation reserve, determine the appropriate tax depreciation rates, calculate deferred income taxes, determine plant retirements, and calculate property tax on the ISRS plant.”²⁴ Unfortunately, a thorough review will likely face resistance from Laclede. As explained

¹⁹ *Report and Order*, Case Nos. GO-2015-0341 and GO-2015-0343, p. 11, 13.

²⁰ The Commission has recognized the importance of conducting audits consistent with GAAS when it ordered “[a]ll auditing activity shall be conducted in accordance with generally accepted auditing standards issued by the American Institute of Certified Public Accountants Standards. All Commission staff members conducting audit activity of any type in these matters shall attest by affidavit that all of their auditing activity and reports comply with these standards.” Case No. ER-2010-0355, *Order Regarding Construction and Prudence Audits*, July 7, 2010, p.4.

²¹ Tr. 132.

²² Tr. 83, 121.

²³ Wells Direct Testimony, Ex. 5, Schedule BS-d2, p. 5; Grisham Direct Testimony, Ex. 7, Schedule JKG-d1, p.4.

by Laclede's own witness, OPC requested Laclede's work orders to enable OPC to perform the necessary review, but Laclede objected and provided only the face sheets.²⁵

The work authorization face sheets reviewed by Staff provide no real detail to enable an auditor to determine whether only eligible costs are being included in the ISRS.²⁶ The Staff auditor, Mr. Wells, testified the face sheets are not the work orders themselves but are documents created before a project begins to authorize the project.²⁷ Each work authorization face sheet includes minimal details and only estimates regarding a project.²⁸ The Staff's audit in this case is a stark contrast to the type of audit the Staff used to perform when Staff would make now discontinued site visits to the utility and review stacks of voluminous work order documents.²⁹

The best evidence of Laclede's ISRS costs is the actual work orders because they provide the following details not available on Laclede's work authorization face sheets: (1) a list of all charges, (2) labor, (3) materials, (4) overhead, (5) reimbursements, (6) allowance for funds used during construction ("AFUDC"), and (7) the date the project was recorded to plant in service.³⁰ Mr. Oligschlaeger testified the Staff's audit did not look at a single Laclede work order, which means Staff's audit did not verify a single one of the above expenses.³¹ When questioned about relying upon work authorization face sheets that do not provide actual expenditures, Mr. Wells candidly testified "verifying the

²⁴ Hyneman Direct Testimony, Ex. 10, p.6.

²⁵ Tr. 71-72; 179-180.

²⁶ Tr. 185.

²⁷ Tr. 89-90.

²⁸ Ex. 12.

²⁹ Tr. 187-188.

³⁰ Tr. 131-132.

³¹ Tr. 132.

expenses was not something I was instructed to do with this audit.”³² Verifying *expenses* incurred should be a basic, necessary part of any audit of a proposed rate increase.³³

It also became clear during the hearing Staff’s audit verified little if any ISRS eligibility requirements. Plant projects eligible for ISRS recovery are limited in that they:

1. Must not increase revenues by directly connecting the infrastructure replacement to new customers;
2. Must be in service and used and useful;
3. Must not have been included in the gas corporation’s rate base in its most recent general rate case;
4. Must replace or extend the useful life of an existing infrastructure;
5. Must be limited to:
 - 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.

³² Tr. 90.

³³ Hyneman Direct Testimony, Ex. 10, p.6.

Staff's auditors testified that practically no eligibility requirements were verified by the Staff's audit and it did not look to confirm that new customers were not connected with the new infrastructure.³⁴ Staff's audit did not check in-service dates to verify the claimed projects were in service;³⁵ did nothing to verify any claims by Laclede that a replaced main was cast iron;³⁶ never involves inspections by a Commission engineer to determine whether the plant being replaced is worn out or in deteriorated condition;³⁷ did not verify the appropriate AFUDC rate was used;³⁸ did not verify any plant *relocation* expenses were mandated by any political subdivision or whether Laclede received any reimbursements from that entity;³⁹ and finally did not check to ensure *any* replacement was "installed to comply with state or federal safety requirements" as required by Section 393.1009(5)(a).⁴⁰

During the evidentiary hearing, Staff's auditor was questioned over Exhibit 12, which includes six work authorization sheets taken from the rebuttal testimony of Laclede witness Mr. Glenn Buck.⁴¹ On cross-examination regarding the reviewed sheets, it was revealed Staff does not have an in-depth understanding of the face sheets and could not explain many codes and descriptions on those sheets.⁴² One face sheet from Exhibit 12, Work Order 900446 (*See Attachment to this brief*), is particularly troubling⁴³:

³⁴ Tr. 94.

³⁵ Tr. 90, 99.

³⁶ Tr. 91.

³⁷ Tr. 91-92.

³⁸ Tr. 92.

³⁹ Tr. 100.

⁴⁰ Tr. 114-115.

⁴¹ Ex. 12; Buck Rebuttal Testimony, Ex. 4, Schedule GWB-1.

⁴² Tr. 92-93.

Work Order Title: Repl w/2998F 2P Maplewood 1E
Work Order Type Description: WO-Replacement Mains & Services
Budget Description: Replacement of Dist Sys – Laclede
Work Order Description: Install 2,998 Ft. of 2PL IP main on Forest, Glades, Mitchell, and Garner
Notes: Related Abandonment Project is 900452 – Task 11944821
Estimated Start Date: Nov 25, 2013
Estimated Completion Date: Feb 24, 2014
Estimated In-Service Date: Feb 24, 2014
Status: in service
Asset Location: Laclede – St. Louis City
Total Estimated Costs: \$270,887.58⁴⁴

This is the extent of the information provided. It tells very little about this project and offers no information to determine ISRS eligibility other than it is a 2,998 ft. 2-inch plastic intermediate pressure main installed to replace a portion of Laclede’s distribution system. The Staff auditor was asked in the hearing to identify anything in the Work Order 900446 face sheet suggesting the project was eligible for ISRS:

- Q. Can you please point me to anything on this work order [face sheet] where it provides any information suggesting this project is eligible for ISRS?
- A. Not on this document, no.
- Q. Did you inquire into this with Laclede?
- A. No, not on this specific work order, I did not.⁴⁵

This was one of only twenty work authorization face sheets Laclede provided Staff for the January and February 2016 update.⁴⁶ On re-direct examination, Staff attempted to rehabilitate its auditor’s testimony on Work Order 900446 by pointing to the

⁴³ Ex. 12, p.5.

⁴⁴ *Id.*

⁴⁵ Tr. 98.

⁴⁶ Buck Rebuttal Testimony, Ex. 4, Schedule GWB-1.

word “replacement” as if that alone should be sufficient to prove ISRS eligibility.⁴⁷ This additional testimony only highlights the entire problem with the Staff’s audit – the Staff appears to be searching for any reason to conclude a project is eligible rather than providing the professional skepticism of an audit conducted under GAAS. An audit under GAAS should be conducted as follows:

[U]nder generally accepted auditing standards, which is the profession’s basic standards for auditors, they require...CPAs, but it should apply to all auditors, to have an attitude of professional skepticism. And that means several things. But one of the things it means is you don’t assume the information is correct. Nor do you assume that it’s dishonest or incorrect. You go in with no bias and say...I want to see if this data is correct and just by having a number on a piece of paper is not sufficient data. You go to the source documents, you see the original documents, and that’s the data you need to verify if the documentation’s correct. That was done for many years.⁴⁸

The Staff’s audit made no attempt to verify that replacements be of plant that is “worn out or in deteriorated condition.”⁴⁹ Of all the requirements, this is one that should receive heightened scrutiny considering the Missouri Supreme Court’s recent opinion overturning a Commission order for allowing replacements that did not satisfy these criteria.⁵⁰ The Commission recognized the importance of the Court’s opinion in Laclede’s last ISRS petitions: “[t]he court’s decision makes clear that the Commission should evaluate the eligibility of gas utility plant projects *narrowly* in order to ensure compliance with the legislature’s intent.”⁵¹ The Court’s opinion, and the Commission’s

⁴⁷ Tr. 118.

⁴⁸ Tr. 198.

⁴⁹ Tr. 91-92.

⁵⁰ *Verified Application & Petition of liberty Energy (Midstates) Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520 (Mo. 2015).

⁵¹ *Report and Order*, Case Nos. GO-2015-0341 and GO-2015-0343, p. 16 (emphasis added).

subsequent interpretation, should result in greater scrutiny by Staff during its audit but the opposite has occurred.

In the last case, the Commission rejected Laclede and Staff's attempt to include telemetry equipment replacement costs in the ISRS because "Laclede failed to show the specific parts replaced were in an impaired condition."⁵² The Commission concluded that simply because plant is old "is not sufficient to demonstrate ISRS eligibility due to a worn out or deteriorated condition" and "*absent some type of impairment in quality, state, or condition, age alone does not justify inclusion of a gas utility project in an ISRS recovery.*"⁵³ In the present case, Staff did not review *any* plant to determine whether the replaced plant was worn out or in deteriorated condition.⁵⁴ It is possible the bulk of Laclede's replacements could be of pipe not worn out or deteriorated and the true purpose is impermissible for ISRS recovery, such as converting Laclede's system from low pressure to immediate pressure to attract more large gas users.

The Commission should expect all work orders for eligible replacements to describe how Laclede determined the plant being replaced is worn out or in deteriorated condition. It is clear from the work authorization face sheets and Staff testimony that no such information is being reviewed by the Staff.⁵⁵ This puts into question *all projects* being requested for cost recovery in the ISRS. OPC is not aware of any work order authorization face sheet that describes the purpose as replacing plant that was worn out or deteriorated. While many work order authorization face sheets reference Laclede's pipeline replacement programs generally, simply qualifying under a Laclede replacement

⁵² *Report and Order*, Case Nos. GO-2015-0341 and GO-2015-0343, p. 16

⁵³ *Id.*, p. 17 (emphasis added).

⁵⁴ Tr. 91-92.

⁵⁵ *Id.*; Ex. 12.

programs does not make the existing plant worn out or in deteriorated condition. The only relevance of the replacement programs are the extent to which they mandate the replacement, thus satisfying the requirement the new plant be “installed to comply with state or federal safety requirements.”⁵⁶ By all appearances, the Laclede and Staff inquiries into whether the existing plant is worn out or in deteriorated condition ends in the affirmative anytime the phrase “Replacement Program” appears.

The plant *in-service date* is another area where far greater scrutiny is needed to certify from plant personnel when costs were transitioned from construction work in progress since this is the date the plant would be eligible for the ISRS.⁵⁷ To verify these numbers, an auditor should review the work order documentation and other source documents.⁵⁸ The work authorization face sheets provide only estimates of when the plant went into service.⁵⁹ This is shown on Work Order 900446 attached to this brief with an estimated start date of November 25, 2013, estimated completion date of February 24, 2014, and an estimated in-service date of February 24, 2014; and the company is apparently claiming the plant went into service in January or February 2016. There is simply no way to know when the plant went into service based on the information presented.

Other work order authorization sheets also show questionable ISRS expenses that could potentially impact eligibility. Work Order 900953, also in Exhibit 12, includes the following project description:

⁵⁶ Section 393.1009(5)(a) RSMo.

⁵⁷ Tr. 185; Section 393.1009(3)(b) RSMo, all eligible plant must be “in service and used and useful.”

⁵⁸ Tr. 185.

⁵⁹ Tr. 90, 173, 185; Ex. 12.

Install 3565 Ft of 2 PL IP main on Union Blvd from Bircher Blvd to West Florissant Ave. Main to be installed as part of the FY15 Main Replacement Program and is needed to facilitate the future abandonment of the 12 ST Union.⁶⁰

This does not provide any indication the new installation replaced anything as required by Section 393.1009(3)(d) RSMo. The description states a new main went into service with the intention of replacing another main that will be abandoned in the future. When Staff's auditor was questioned on the meaning of the language "to facilitate future abandonment" he testified in his opinion the language means "they intend to...abandon the pipe, but they need to do something beforehand to allow service to continue in the meantime."⁶¹ This work authorization face sheet calls into question whether anything was actually replaced and offers no answers.

As previously stated, the Commission concluded in Laclede's last ISRS "*Staff's auditing unit reviewed all supporting work papers, work orders, and other documentation provided by Laclede.*"⁶² The facts in this case do not support the same finding. Allowing Laclede to add \$28 million of additional ISRS costs during the sixty-day audit effectively limited the audit to twenty-three days and is against the public interest because it prevents the Commission from conducting a meaningful audit consistent with GAAS in the sixty-day timeframe prescribed by the statute. The full sixty days is necessary to thoroughly audit whether the eligibility requirements have been met and whether the company's determination of cost is appropriate.

⁶⁰ Ex. 12, p. 4.

⁶¹ Tr. 97-98.

⁶² *Report and Order*, Case Nos. GO-2015-0341 and GO-2015-0343, p.11, 13-14.

Erroneous Finding No. 3: “*the Commission...will still perform a prudence review [where] it may disallow the recovery of a project previously included*”

The facts of this case disprove the finding previously that “*the Commission...will still perform a prudence review were [sic] it may disallow the recovery of a project previously included*” in an ISRS.⁶³ That finding resulted in the Commission stating “*were the inclusion of a project in an ISRS to be the final step in the project review, OPC’s narrow interpretation would be more persuasive.*”⁶⁴ The facts of the present case paint a different picture and show the ISRS petition has always been the final step of the Staff’s review and, as a result, the final step in the Commission’s review.

The basis of the Commission’s belief that ISRS costs were reviewed for eligibility in a rate case is based on Staff witness’ incorrect testimony from the previous case that Staff reviews ISRS work orders in rate cases.⁶⁵ The Commission appears to have relied upon that statement when it allowed Laclede to add more costs during the audit period.⁶⁶ Staff witness Mr. Oligschlaeger later clarified that the Staff does not do any ISRS-eligibility analysis in general rate cases.⁶⁷

In addition to the relief requested by OPC, the facts of this case suggest Laclede needs a very thorough audit of ISRS work orders going back to the last Laclede Gas and MGE rate cases to ensure ratepayers receive a proper audit of all ISRS costs. Section 393.1015.8 RSMo authorizes the Commission to do a prudence review of costs previously deemed eligible in the company’s subsequent general rate proceeding where the Commission may disallow ISRS costs. OPC recently filed a complaint against

⁶³ *Id.*, p.19.

⁶⁴ *Id.*, p. 18.

⁶⁵ Hyneman Direct, Ex.10, p.15.

⁶⁶ *Id.*

Laclede in Case No. GC-2016-0297 alleging Laclede's rates are excessive and should be reduced.⁶⁸ Should the Commission determine Laclede's general rates should be reset, it would provide the Commission with an opportunity to also address the concerns raised in this case regarding Laclede's ISRS.

2. Determining the Lawfulness of the Petition: Does Laclede's Petition Provide the Required Supporting Documentation?

a. Laclede Petitions Violate Commission Rule 3.265

In the last ISRS petition, the Commission's conclusions of law did not provide a detailed analysis of the ISRS rule to explain how the Commission reached its conclusion that Laclede's petition complied with the filing requirements in the rule. An understanding of the ISRS rule is crucial because it defines the supporting documentation that must be filed with the petition at the time of filing and in the subsequent rate case. 4 CSR 240-3.265(20) states:

(20) At the time that a natural gas utility files a petition with the commission seeking to establish, change or reconcile 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 subject utility's supporting documentation shall include workpapers showing the calculation of the proposed ISRS, and shall include, at a minimum, the following information:

(J) An explanation of when the infrastructure replacement projects associated with the ISRS were completed and became used and useful;

(K) For each project for which recovery is sought, the net original cost of the infrastructure system replacements (original cost of eligible infrastructure

⁶⁷ Oligschlaeger Rebuttal, Ex. 9, p.10.

⁶⁸ Notice of Complaint, Case No. GC-2016-0297, April 28, 2016, p.1.

system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective ISRS), the amount of related ISRS costs that are eligible for recovery during the period in which the ISRS will be in effect, and a breakdown of those costs identifying which of the following project categories apply and the specific requirements being satisfied by the infrastructure replacements for each...

(L) 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.

(emphasis added). The rule does not allow a party to file its supporting documentation at any point during the audit period. The rule, as well as Section 393.1015.1(1) RSMo, requires Laclede to file “its supporting documentation” with the Commission. There is no ambiguity in this language. The intent of this rule is to require supporting documentation be filed with the petition and served on OPC to provide Staff and OPC sixty days to audit the petition. To interpret this language as allowing Laclede to file only a portion of its supporting documentation defeats the consumer protections of the statute – providing Staff and OPC a sufficient opportunity to review and, if necessary, challenge the claimed ISRS costs. In construing a statute, the Commission and Missouri courts must not apply an interpretation that would lead to oppressive, unreasonable, or absurd results that eliminate OPC’s ability to audit and challenge costs by interpreting the ISRS statute as the Commission did in the last ISRS petition. Such unreasonable interpretations are to be avoided. *Elrod v. Treasurer of Mo. as Custodian of Second Injury Fund*, 138 S.W.3d 714, 716 (Mo. banc 2004).

For the January and February 2016 ISRS costs, Laclede’s witness Mr. Buck testified much of the supporting documentation required by 4 CSR 240-3.265(20)(J) and

(K) was not filed with Laclede's petition. Specifically, Mr. Buck testified Laclede's petition did not include for the January and February 2016 costs:

- the net original cost of each project;⁶⁹
- the location of the project;⁷⁰
- the portions of the project completed used and useful;⁷¹
- the portions of the project that are not used and useful;⁷²

The Commission's order in the last ISRS petition does not sufficiently explain why Laclede's lack of required documentation is in compliance with the rule but only states providing cost estimates without the required specific detail "meets the statutory and regulatory requirements for the initial petition filing."⁷³ The order from Laclede's last ISRS petition further provides "*[s]o 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 petition are acceptable.*"⁷⁴ In light of the current case and the inability of the Staff to perform an effective review, a finding here that the Laclede/Staff update agreement is unacceptable is consistent with the conditional language of the Commission's last order.

The Commission can find important guidance in how it interprets the ISRS rule by its own order adopting the rule. In its 2004 *Final Order of Rulemaking*, the

⁶⁹ Tr. 49-50.

⁷⁰ Tr. 50.

⁷¹ Tr. 50-51.

⁷² *Id.*

⁷³ *Report and Order*, Case Nos. GO-2015-0341 and GO-2015-0343, p. 18.

⁷⁴ *Id.*

Commission responded to opposition to the proposed filing requirements contained in 4 CSR 240-3.265(20):

The Commission's purpose in developing this rule is to implement the governing statutes in a manner that is consistent with the statutes and that provides for the timely processing of the ISRS petitions, cost true-ups and prudency reviews permitted by the statutes. The rule does ask for a significant amount of information, all of this information is either directly required for the ISRS petition review itself or for the prudency reviews that are specifically authorized by the statutes. **The statutory timeframes for Staff and OPC analysis of the petitions and developing recommendations and the Commission's issuance of an Order require the level of detail outlined in this rule. The statute does not permit sufficient time to allow for a thorough review of the petition,** development of data requests, a twenty (20) day turn around on responses, analysis of these initial data requests responses, a potential second round of data requests, another twenty (20) day turn around on responses, a staff recommendation, testimony rounds, hearings and a Commission decision. **The data requirements outlined in the rule will significantly simplify this process by notifying the natural gas utility what information will be required in the petition when it is filed.** This up front submittal requirement will significantly reduce the number of data requests sent to the natural gas utilities with a twenty (20) day turn around and hopefully reduce confusion between the parties regarding what information is needed. Outlining these requirements in the rule will also result in each of the natural gas utilities being notified up front as to what information will be required when they file their petition.⁷⁵

Here the Commission explained that, while the filing requirement mandates “a significant amount of information,” “[t]he statutory timeframes for Staff and OPC analysis...require the level of detail outlined in this rule.” The *Final Order of Rulemaking* also explains not requiring the company to file the supporting documentation with the petition will impair either party’s audit ability. The Commission acknowledges the ISRS statute’s sixty day

⁷⁵ *Final Order of Rulemaking*, Case No. GX-2004-0090, February 24, 2004, p. 11 (emphasis added).

audit window does not provide sufficient time to audit an ISRS. The reason for this, according to the Commission, is the inability to timely process an ISRS petition if one takes into account the utility's twenty-day period to respond to discovery and another twenty days to respond to Staff or OPC follow-up discovery. The Commission clearly expressed, in order to protect the Staff and OPC ability to review a petition, the rule requires the detailed documents be filed *with the petition*. OPC urges the Commission to carefully read the passage above from the *Final Order of Rulemaking* and conclude allowing supporting documentation to be filed at a later date is inconsistent with the Commission's clearly stated intent when it promulgated the ISRS rules.

b. Laclede Petitions Violate Section 393.1015.1(1) RSMo

OPC also asks the Commission to reconsider its interpretation of the ISRS statute in light of the new facts regarding the limited extent of the Staff's ISRS audit and conclude Laclede's petition violates Section 393.1015.1(1) RSMo because Laclede did not file its supporting documentation with the petition and serve that documentation on OPC at the same time.

393.1015. 1. (1) 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.

Laclede submitting its supporting documentation to Staff and OPC *after* "the time that a gas corporation files a petition" is not permitted under the law.

c. Laclede Petitions Violate Section 393.1015.2(2) RSMo

In addition, the Laclede/Staff agreement violates Section 393.1015.2(2) RSMo because allowing Laclede to supplement its petition with \$28 million in additional ISRS

costs effectively limits the statutory sixty-day audit period to something far less. In this case, Laclede's supplemental cost filing limited the audit period to twenty-three days or only thirty-eight percent (38%) of the statutory sixty-day audit. The Commission need only look at its *Final Order of Rulemaking* for the ISRS rules to recognize the importance of maximizing the full sixty day audit, and the due process problems created when that period is cut short.

3. Conclusion

Laclede has the burden of proving its proposed surcharge rate increase is just and reasonable.⁷⁶ The Commission recognized this in Laclede's last ISRS petitions, when the Commission concluded, "[b]oth Laclede and MGE, as the parties requesting an increase in ISRS rates, have the burden of proof to demonstrate through competent and substantial evidence that the projects qualify under the ISRS statute."⁷⁷

Each ISRS petition should be strictly scrutinized to the greatest extent possible during the sixty-day audit to ensure the surcharge rate is increased no more than what the ISRS statutes permit. Reliance upon the subsequent rate case to review for ISRS eligibility becomes far less necessary if projects are thoroughly reviewed during the petition phase. Although OPC is not opposing the ISRS costs through December 2015, the facts of this case would support a Commission finding that all ISRS costs, not just the update costs, were not properly audited. For the reasons argued above, as supported by the overwhelming weight of the evidence before the Commission, OPC requests a Commission order that rejects the January and February 2016 claimed ISRS costs from Laclede's ISRS because they were not supported with proper documentation. In addition,

⁷⁶ Section 393.150.2 RSMo.

⁷⁷ *Report and Order*, Case Nos. GO-2015-0341 and GO-2015-0343, November 12, 2015, p. 15.

the Commission should reject the January and February 2016 claimed ISRS costs because the Laclede/Staff agreement to allow plant additions during the audit is contrary to the public interest because it compromises the Commission's ability to provide any meaningful audit of the costs Laclede claims are ISRS eligible.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 4th day of May 2016.

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