

**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.	)	

**SUGGESTIONS IN SUPPORT  
OF OBJECTION TO EXHIBIT 14**

**COMES NOW** the Office of the Public Counsel (“OPC”) and for its Suggestions in Support of Objection to Exhibit 14, states:

1. OPC offers these suggestions in support of the objection OPC made during the hearing to Laclede Gas Company’s (“Laclede”) offer of Exhibit 14 into the evidentiary record. Writings offered as evidence must be authenticated or they lack the necessary evidentiary foundation to be admitted into the record and Exhibit 14 was never authenticated by any witness testifying that the document is what Laclede purports it to be.<sup>1</sup> Exhibit 13, however, was authenticated during the evidentiary hearing by Staff witness Mr. Brian Wells, who testified he was familiar with the document and verified it as such.<sup>2</sup> Accordingly, OPC withdraws its objection to Exhibit 13 only.

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<sup>1</sup> *Asset Acceptance v. Lodge*, 325 S.W.3d 525, 528 (Mo. Ct. App. E.D. 2010); *See also* 4 CSR 240-2.130; and Section 536.070 RSMo.

<sup>2</sup> Transcript (Tr.) p. 106.

2. A basic principle of evidentiary foundations regarding business writings and documents is *authentication*, defined by Black’s Law Dictionary as, “the act of proving that something (as a document) is true or genuine, esp. so that it may be admitted as evidence; the condition of being so proved.”<sup>3</sup> Missouri law provides, “[b]efore a writing can be admitted into evidence its proponent must show that it is, in fact, what it is claimed to be.”<sup>4</sup> Missouri law provides further, “the authenticity of a document cannot be assumed, what it purports to be must be established by proof.”<sup>5</sup> “When demonstrative evidence is offered, an adequate foundation for admission requires authentication that the object offered is the object involved in the controversy and remains in a condition substantially unchanged.”<sup>6</sup> Laclede was unable to elicit necessary testimonial evidence verifying the document offered was the supporting documentation Laclede purported it to be. By not authenticating Exhibit 14, proper foundation was not laid and Exhibit 14 should not be admitted into evidence or relied upon in any matter whatsoever.<sup>7</sup>

3. Laclede’s counsel claimed Exhibit 14 includes supporting documentation provided to Staff and OPC by Laclede’s witness Mr. Glenn Buck on March 9, 2016 to support Laclede’s claimed January and February 2016 infrastructure system replacement surcharge (“ISRS”) costs. However, Laclede made no attempt to have Exhibit 14 authenticated by either of the two witnesses that would have been most familiar with it – Laclede witness Mr. Glenn Buck or Staff witness Ms. Jennifer Grisham. Laclede

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<sup>3</sup> Black’s Law Dictionary, Seventh Edition, p. 127.

<sup>4</sup> *Partney v. Reed*, 889 S.W.2d 896, 901 (Mo. Ct. App. 1994), *quoting* William A. Schroeder, 23 Missouri Practice: Missouri Evidence § 900.1 at 363 (1992).

<sup>5</sup> *AJM Packaging Corp. v. Crossland Const. Co., Inc.*, 962 S.W.2d 906, 910 n.6 (Mo. Ct. App. S.D. 1998).

<sup>6</sup> *Storm v. Ford Motor Co.*, 526 S.W.2d 875, 878 (Mo. Ct. App. 1975).

<sup>7</sup> See 4 CSR 240-2.130; and Section 536.070 RSMo.

attempted only to authenticate Exhibit 14 with OPC witness Mr. Charles Hyneman who testified he did not recognize the document, had no recollection of ever seeing it before, and did not provide any testimony to support a finding that Exhibit 14 is supporting documentation of the January and February 2016 ISRS costs.<sup>8</sup> No witness testified as to the authenticity of a single page of the document and the numbers contained therein. If Exhibit 14 is a document Mr. Buck or Ms. Grisham were familiar with, it is puzzling why Laclede chose not to attempt to verify its authenticity with one of those two witnesses. Regardless, the exhibit was never authenticated and OPC's objection should be sustained.

4. Commission rules require "the party offering exhibits also shall be prepared to furnish a copy to each commissioner, the presiding officer, and each party" (4 CSR 240-2.130(15)). Laclede had only two copies of its Exhibits 13 and 14 and was unable to provide any copies for the Commissioners and both parties. It was obvious during the evidentiary hearing Laclede had no previous intention of ever providing the Commission with its supporting documentation for the claimed January and February 2016 ISRS costs and Laclede also chose not to present any supporting documentation to the Commission in any prior filing in this case. It was not until the Commission Chairman suggested Laclede cite in its post-hearing brief to where the January and February 2016 support can be found that Laclede scrambled to get a large stack of data into the record purporting it to be the supporting documentation for the January and February ISRS updates. Laclede's attempts to authenticate Exhibit 14 failed and Laclede was unable to establish any foundation for accepting the document into evidence.

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<sup>8</sup> Tr. pp. 167-168.

WHEREFORE, the Office of the Public Counsel offers these suggestions in support of its objection to Exhibit 14 and requests the Commission sustain OPC's objection as to Exhibit 14.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to all counsel of record this 28<sup>th</sup> day of April 2016:

Case No. GO-2016-0196

**Missouri Public Service Commission**

Jeff Keevil  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
jeff.keevil@psc.mo.gov

**Missouri Public Service Commission**

Department Staff Counsel  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
staffcounsel@psc.mo.gov

**Laclede Gas Company**

Glenn W Buck  
700 Market St, 5th Floor  
St. Louis, MO 63101  
glenn.buck@thelacledegroup.com

**Laclede Gas Company**

Rick E Zucker  
700 Market Street, 6th Floor  
St. Louis, MO 63101  
rick.zucker@thelacledegroup.com

Case No. GO-2016-0197

**Missouri Public Service Commission**

Jeff Keevil  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
jeff.keevil@psc.mo.gov

**Missouri Public Service Commission**

Department Staff Counsel  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
staffcounsel@psc.mo.gov

**Missouri Gas Energy (Laclede)**

Rick E Zucker  
700 Market Street, 6th Floor  
St. Louis, MO 63101  
rick.zucker@thelacledegroup.com

**Missouri Gas Energy (Laclede)**

Glenn W Buck  
700 Market St, 5th Floor  
St. Louis, MO 63101  
glenn.buck@thelacledegroup.com

**Missouri Gas Energy (Laclede)**

Michael R Noack  
7500 E 35th Terr  
Kansas City, MO 64129  
michael.noack@thelacledegroup.com

/s/ **Marc Poston**

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