

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

Office of the Public Counsel,	)	
	)	
Complainant,	)	
	)	
vs.	)	Case No. GC-2016-0297
	)	
Laclede Gas Company, Missouri Gas	)	
Energy,	)	
	)	
Respondent.	)	

**MOTION TO COMPEL**

COMES NOW the Office of the Public Counsel (“OPC”) and for its Motion to Compel states as follows:

1. OPC propounded data requests (DR) upon Laclede Gas Company and Missouri Gas Energy (collectively referred to as “Laclede”) seeking information and evidence regarding the details of the above-styled complaint: on the following dates in May of 2016: 13, 23, and 24.

2. On May 23, 2016, Laclede sent notice of its objection to two of the data requests propounded on May 13:

DR 1000 states: Please provide a list and arrange for a review of all board of director meeting minutes and meeting handouts and presentations (including minutes of all committee meetings) for The Laclede Group and Laclede Gas for the period between January 2013 and May 5, 2016.

*Laclede objects to this DR only to the extent it seeks information from Laclede Group that does not pertain to Laclede Gas or MGE. Laclede reserves the right to redact such information.*

DR 1005 states: Please provide a copy of each and every financial report produced for management review in 2015 and 2016.

*Laclede objects to this DR on the grounds that it is overly broad and unduly burdensome. Searching for, locating and producing each and every financial report produced for management is not a reasonable request and appears to be intended to harass the Company and cause it to incur unnecessary expense.*

3. Despite efforts to resolve these objections by email, phone, and by discovery conference, the parties have been unsuccessful in doing so.

4. The objections lodged by Laclede are not connected to any legal basis and are designed simply to prevent the OPC from conducting its investigations against Laclede.

5. In regards to Laclede's objection to DR 1000, all companies in the referenced board minutes are affiliates of Laclede and therefore subject to OPC review under the Affiliate Transactions Rule. The revenue requirement effect of affiliate transactions will be a consideration and shows how management spends its time. If management is engaged primarily in activities related to mergers and acquisitions, it will affect OPC's allocation of management salaries to Laclede. Board minutes are a basic audit document and no utility has ever tried to redact these prior to producing them to the OPC.

6. In regards to Laclede's objection to DR 1005, this is a common data request (typically involved in rate cases) and has never been described as "overly broad" or "unduly burdensome" in any other case before the Public Service Commission ("Commission").

7. On June 2, 2016, Laclede sent another letter indicating that "based upon the current standing of the case, an inability to answer the volume of data requests within 20 days, and one was not reasonably calculated to lead to the discovery of admissible

evidence”, it would not be answering any of the data requests from May 23 and 24, 2016 (A complete copy of that letter is attached to this Motion as Attachment 1).

8. In regards to the “standing of the case”, Laclede maintains it should not have to answer these requests until its Motion to Dismiss is ruled upon by the Commission. This is unfounded. There is no statute or regulation allowing any utility to abstain from responding to a data request involving a case where a Motion to Dismiss is pending. Furthermore, the OPC would be entitled to this information whether there was a contested matter pending at all. Sections 386.450, 386.390 and 386.710 (among others) RSMo conclusively prove that assertion to be wrong, as the Commission has repeatedly recognized.<sup>1</sup> In order to adequately represent and protect the public interest as required by Section 386.710 RSMo, OPC must have unfettered access to a utility’s books and records. In order to properly investigate this complaint pursuant to Section 386.390

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<sup>1</sup> In Case No. WR-2000-281, the Commission cited the Raytown Water ruling and expanded upon it:

[T]he Staff of the Commission and the (OPC) enjoy broader discovery powers than other litigants. Section 386.450, RSMo, authorizes the Commission and the Public Counsel to examine "books, accounts, papers or records" in the hands of "any corporation, person or public utility," "kept . . . in any office or place within or without this state[.]" The Commission has interpreted this statute to authorize Public Counsel to serve DRs on regulated entities, and the Commission to compel responses to those DRs, even in the absence of a pending proceeding.

...

Likewise, this authority is not conditioned on considerations of relevance under Rule 56.01(b)(1), Mo. R. Civ. Pro., made applicable to Commission proceedings by Section 536.073.2, RSMo, and Commission Rule 4 CSR 240-2.090(1).

In Case No. ER-2007-0002 in an order issued March 15, 2007, the Commission noted with respect to Section 386.450: “That statute does not require (OPC) to show that the requested documents are relevant to any particular issue in a contested case. Indeed, the statute allows the Commission to require the production of the requested documents even if there were no contested case in existence.”

RSMo, OPC must have unfettered access to a utility's books and records. Section 386.450 RSMo gives the OPC unfettered access to a utility's books and records. Section 386.710.4 gives OPC "all powers necessary or proper" to carry out its duties. None of this authority depends, as Laclede alleges, on "the current standing of the case". In fact, OPC will continue to seek this information whether the Complaint is disposed of or not.

9. In regards to Laclede's "inability to answer the volume of data requests within 20 days", they offer no legal basis for their position. Under regulation, the twenty days required to respond to a data request can be extended if an agreement is reached between the parties or good cause is shown. Laclede failed to even broach the idea of an agreement with OPC regarding an alternate deadline until after its June 2, 2016 letter. This letter simply said it would provide responses sixty days "after a ruling on the Motion to Dismiss". The discussions after OPC received this letter did not result in a timeline agreeable to both parties. Further, Laclede has shown no good cause in needing more than twenty days to respond to these requests. Laclede simply states it will provide these responses within sixty days of the ruling of the Motion to Dismiss. To begin, it is inconsistent for a utility such as Laclede who often complains of "regulatory lag" and the length of rate cases to now ask for more time to comply with discovery requests. Additionally, Laclede is under a statutory obligation to provide this information to the OPC upon request. More concerning is the fact any further delay involving this information will result in stale and dated evidence as well as allowing Laclede to continue overearning as this very complaint alleges. It is only in the interest of the public good such delays should be tolerated or sanctioned.

10. Laclede then offers this objection to OPC's Data Request 27:

DR 27 states: Is Laclede Group or any affiliate of Laclede Group currently in any discussions with other Companies about a future acquisition for Laclede Group or any of its subsidiaries? If yes, please identify the acquisition target and provide a detailed discussion of the activities to date.

*Laclede objects to this DR to the extent it seeks information from companies other than Laclede Gas on discussions about future acquisitions. Any such information would be speculative and highly sensitive and would not lead to any evidence bearing on Laclede Gas' cost of service*

To repeat OPC's assertion in Paragraph 5, if management is engaged primarily in activities related to mergers and acquisitions, it will affect OPC's allocation of management salaries to Laclede. Further, OPC is entitled to seek this information pursuant to its broad authority under Section 386.450 RSMo and its broad responsibility under Section 386.710 RSMo.

11. These data requests include information OPC believes the Commission will find helpful as to whether or not Laclede is overearning. Regardless of how the complaint proceeds, OPC intends to continue to pursue discovery.

12. Commission rule 4 CSR 240-2.090(8)(A) requires a party, as a first step in seeking to compel responses to discovery, to confer or attempt to confer with opposing counsel. On May 26, 2016, OPC sent an email to Rick Zucker, attorney for Laclede, in an attempt to begin the process regarding Laclede's objections outlined in its May 23, 2016 email. To date, this email was no responded to directly but was addressed in a phone conversation. 4 CSR 240-2.090(8)(B) requires a conference call with the presiding officer after counsel have conferred. OPC directly phoned Rick Zucker on June 13, 2016 regarding Laclede's objections and failure to offer timely answers. Two days of phone calls commenced to which no productive conclusion was reached. A discovery conference was then held on June 17, 2016 with the same result.

13. In addition to requiring a ruling on Laclede's objections to order these responses, OPC notes Laclede has made no specific objection to any other questions submitted. 4 CSR 240-2.090(2)(D) requires that objections to DRs be served within 10 days of receipt. Any objection to all other data requests must have been lodged no later than June 3. The reasoning outlined in Laclede's June 2, 2016 letter lacks any authority or persuasion to allow Laclede to offer any further delay in providing these responses.

WHEREFORE Public Counsel respectfully requests that the Commission compel Laclede Gas Company and Missouri Gas Energy to respond to data requests submitted on May 13, May 23, and May 24, 2016 by overruling their objections and requiring an immediate answer to all other data requests.

Respectfully submitted,  
OFFICE OF THE PUBLIC COUNSEL

By: /s/ James M. Owen

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to all parties in Case No. GC-2016-0297 this 20<sup>th</sup> day of June 2016.

By: /s/ James M. Owen

Rick Zucker  
Associate General Counsel  
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314-342-0533

June 2, 2016

VIA ELECTRONIC MAIL

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Re: Case No. GC-2016-0297; Objection to Data Requests (DRs)

Dear James:

On behalf of Laclede Gas and MGE (together, “Laclede”), and pursuant to Commission Rule 2.090(2), I am writing to object to 103 data requests OPC submitted on May 23 and 24, 2016. Our objections are based upon the current standing of the case, an inability to answer the volume of data requests within 20 days, and one DR (DR 27) that is not reasonably calculated to lead to the discovery of admissible evidence.

Laclede received and is responding to six DRs sent by OPC on May 13. However, based on the number and nature of the DRs sent by OPC on May 23 and 24, responses would require a significant diversion of resources for Laclede employees from the jobs they are currently doing. As you know, Laclede has taken the position that OPC’s Complaint is based on unsupported, immaterial, flawed and inappropriately motivated allegations, all of which warrant dismissal. As such, Laclede’s Motion to Dismiss OPC’s Complaint argued, in part, that Laclede and other parties should not at this time be required to produce the amount of resources necessary to conduct a case of this nature. Consistent therewith, Laclede believes that it is premature to commit the resources necessary to respond to the 103 DRs until the Commission has had an opportunity to rule on Laclede’s Motion to Dismiss. We believe the grounds for such an approach in this instance are particularly compelling for a variety of reasons.

A. As discussed in its Motion to Dismiss, the Complaint appeared to be thrown together hastily and contained numerous errors. Most significantly, the entire Complaint was based upon a conclusion that Laclede’s fiscal 2015 ROE was 10.45%, a figure derived from an SEC financial filing. The Complaint contained no citation to the facts in that SEC document that OPC relied on in reaching this conclusion.

B. Through brief discovery, Laclede was able to confirm that the 10.45% ROE was calculated by dividing 2015 income by 2014 equity – an inexplicable mismatch that is wholly inconsistent with how utility rates are normally derived and that had the effect of producing a misleadingly inflated ROE. This error was only compounded by OPC’s corresponding failure to exclude a one-time gain on the sale of property that OPC recently acknowledged should be eliminated for ratemaking purposes. Had OPC simply avoided these two gross errors in its calculation, it would have derived an ROE that is actually lower than the ROE currently authorized

by the Commission for the Company's ISRS filings and very close to the average ROE that OPC claims is being authorized for gas utilities today.

C. The Complaint also appears to have been politically motivated. The legislature was considering a bill that would revise the gas ISRS statute to reduce the required frequency of gas utility rate cases from once per three years to once per five years. A legislator who opposed the bill informed Laclede of an allegation that Laclede was overearning. Laclede contacted OPC, who effectively confirmed that it was the source of the claim by agreeing to add the overearning issue to the agenda of an upcoming prearranged meeting between Laclede and OPC. This meeting took place one week before the Complaint was filed. During that week, the parties discussed their positions with regard to Laclede's earnings. As discussed above, Laclede noted that, among other things, OPC was calculating ROE incorrectly, and had failed to exclude a one-time gain on the sale of property. Nevertheless, on Tuesday, April 26, OPC informed Laclede for the first time that it had decided to file an earnings complaint, which it did shortly thereafter using the artificially inflated ROE. At the same time, the gas ISRS bill was still under consideration as the legislative session entered the home stretch. Shortly after the Complaint was filed, one or more legislators cited the overearnings allegation to bolster their position opposing the bill.

The clear implication of these facts is that OPC filed the Complaint, not because of a good faith belief that Laclede's rates were unjust and unreasonable on a going-forward basis, but to create an impression that such was the case, an impression that could be, and was, used on the Senate floor in an effort to defeat the bill.

Accordingly, on May 31, Laclede filed a motion to dismiss the Complaint. Laclede's motion was based, among other things, on the absence of any cost of service analysis that would support a claim that Laclede is currently or persistently overearning, the absence of even a single fact supporting the conclusion that Laclede is or was earning a 10.45% ROE, and the failure to support a claim that Laclede's rates are unreasonable by alleging an ROE that was within the zone of reasonableness.

On June 1, the Commission issued an order setting June 14, 2016 as the date by which parties should respond to Laclede's motion to dismiss, among other pleadings. As stated above, Laclede believes it is premature to process 103 DRs given the current status of the motion to dismiss.

Were Laclede to process the DRs, it would not be able to process the 103 DRs within 20 days due to the sheer volume. In addition, given the sudden filing of the Complaint, Laclede is neither staffed nor prepared to process this number of DRs. Laclede believes that, should it prove necessary to substantively respond to these DRs, it can do so within 60 days of beginning to address them in earnest, with the understanding that DRs would be provided throughout this period as they were completed.

Finally, Laclede objects to DR 27 as not being reasonably calculated to lead to the discovery of admissible evidence. DR 27 states:

Is Laclede Group or any affiliate of Laclede Group currently in any discussions with other Companies about a future acquisition for Laclede Group or any of its subsidiaries? If yes, please identify the acquisition target and provide a detailed discussion of the activities to date.



Laclede objects to this DR to the extent it seeks information from companies other than Laclede Gas on discussions about future acquisitions. Any such information would be speculative and highly sensitive and would not lead to any evidence bearing on Laclede Gas' cost of service.

Sincerely,

**/s/ Rick Zucker**