

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

Office of the Public Counsel,)	
)	
Complainant,)	
)	<u>Case No. GC-2016-0297</u>
v.)	
)	
Laclede Gas Company and)	
Missouri Gas Energy)	
)	
Respondents.)	

STAFF’S RESPONSE TO RESPONDENTS’ MAY 31 PLEADINGS

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its response to Respondents’ May 31, 2016 filings, states as follows:

1. On April 26, 2016,¹ the Office of the Public Counsel (“OPC”) filed its Complaint with the Missouri Public Service Commission (“Commission”) against Laclede Gas Company (“Laclede”) and Missouri Gas Energy (“MGE”) (collectively, “the Company” or “Respondents”) alleging that Laclede and MGE are charging rates that are unjust and unreasonable.

2. On May 20, Staff filed its *Response to Complaint*, in which it stated that OPC had not adequately supported its claims of overearning and that OPC’s request for expedited treatment failed to comply with the Commission’s rule.

¹ Calendar references are to 2016 unless otherwise stated.

3. On May 31, Respondents filed an answer to the complaint, a motion to dismiss, and an objection to the application to intervene filed by Consumers Council of Missouri (“CCM”).

4. On June 1, the Commission ordered Staff to respond to Respondents’ May 31 pleadings no later than June 14. Subsequently on June 6, Respondents filed a response to the application to intervene filed by Missouri Industrial Energy Consumers (“MIEC”).

5. As discussed in detail in its May 20 filing, Staff maintains that OPC’s filing is inadequate to support its claims of overearning by Laclede and MGE. Further, all of the numbers used by OPC to support its assertion of overearning were combined amounts, comprising of financial results for both Laclede and MGE. However, OPC’s claims are that Laclede and MGE, individually, are overearning. At some point, if the Commission allows this proceeding to go forward, OPC will need to break out the numbers in its analysis separately in order to support allegations that each utility is overearning on a stand-alone basis.

6. Staff has already, in its May 20 filing, stated that OPC’s complaint “is incomplete and is inadequate to establish the substance of the claims herein” (see paragraph 3 of *Staff’s Response to Complaint*) and that “OPC has not adequately supported its claims of overearning by Laclede and MGE. Rather than requesting the Commission to order Staff to investigate the substance of OPC’s claims and, in essence, make OPC’s case for it, OPC should have provided adequate support for its complaint in its initial filing” (see paragraph 5 of *Staff’s Response to Complaint*). Therefore, Staff is assuming for purposes of this filing that the primary focus of the

Commission's June 1 order that Staff respond to Respondents' May 31 pleadings is Respondents' statements regarding calculation of return on equity (ROE). Accordingly, this filing will focus on the statements regarding appropriate ROE calculation, while briefly addressing some other matters.

In their *Answer to Complaint and Response to Motion for Expedited Treatment* at pages 3 – 6, Respondents present two criticisms of OPC's calculated fiscal year ROE that Staff agrees are valid.

The first argument presented by Respondents is that OPC improperly calculated the Company's ROE at 10.45% by comparing net income earned in its fiscal year 2015 period (the 12 months ending September 30, 2015) to the Respondents' shareholder equity balance at the beginning of the period (October 1, 2014). Respondents state that OPC's ROE figure is overstated as a result of a mismatch between the equity income used for that 12-month period and the amount of equity investment giving rise to that income during that same period. Respondents opine that a better basis for calculating the ROE would be to compare the Company's fiscal year 2015 net income to its equity balance as of the end of that period (i.e., at September 30, 2015). Using that approach, Respondents calculated a 10.15% actual ROE for the 12 months ending September 30, 2015.

Staff agrees that OPC's approach to calculating the Respondents' ROE does not result in a fair representation of the Company's actual earned equity return for the period examined, and serves to overstate that amount. However, the approach normally used by the Staff in making an initial evaluation of a utility's actual earnings level for a period of time is to compare the utility's net income to its *average* equity

balance² over the period being examined. Using an average equity balance approach, Staff calculated that the Respondents earned an actual ROE of 10.05% for fiscal year 2015 using unadjusted earnings results.

In their Answer, Respondents go on to make an additional criticism of OPC's ROE calculation. The Company alleges that OPC improperly reflected, in the Respondents' net income results for fiscal year 2015, a one-time material gain associated with a sale of certain Laclede property. Respondents correctly assert that the Commission has maintained a long-standing policy that gains or losses associated with sale of utility assets should be treated below-the-line for ratemaking purposes, and not be taken into account in setting utility rates.

Staff agrees that an appropriate review of the Respondents' actual fiscal year 2015 earnings should recognize the fact that a material driver of its recorded ROE for that period is, at best, highly unlikely to be incorporated into any ratemaking actions taken currently or in the near future. Therefore, Laclede's one-time gain on sale of property should be excluded in the Respondents' ROE calculation pertaining to 2015 fiscal year financial results for purposes of measuring the current adequacy of the Company's rates.

After excluding the one-time gain on sale from Laclede's fiscal year 2015 net income, and measuring the Respondents' fiscal year 2015 ROE on an appropriate average equity balance basis, Staff has calculated an actual equity return for the

² The use of a period-ending equity balance in calculating ROE, as presented by Respondents, is more appropriate when the net income amount examined is likewise adjusted to period-ending levels using common normalization and annualization analyses.

Company of 9.60% for the 12 months ending September 30, 2015.³ This amount is lower than the 9.75% ROE value specified in Laclede's most recent rate case stipulation (Case No. GR-2013-0171) as the assumed ROE to use in ISRS calculations, and is equal to the 9.60% average ROE value from recent ratemaking proceedings involving natural gas utilities in other jurisdictions that OPC cites in its complaint filing.⁴

7. Staff cautions the Commission that *much* more work would need to be done to *properly* analyze the Company's earnings levels for fiscal year 2015 or a more updated period before making a reliable assertion as to whether the Respondents are currently over-earning, under-earning, or earning at or near a reasonable ROE on a combined basis or individually. As noted by Respondents in their Motion to Dismiss there are a "myriad of normalization and other cost of service adjustments that would need to be made to transform a per book ROE calculation [such as what has been presented in this case to date] to the kind of ROE that would result from the Commission ratemaking process." However, the analysis that Staff has performed regarding OPC's allegations of over-earnings by Laclede and MGE has led Staff to conclude that OPC has failed to provide credible evidence of current over-earnings on the part of either Laclede or MGE that would justify further use of Staff and Commission time and resources in a more in-depth review of these utilities' current earnings levels at this time.

³ Staff's adjustment to ROE to eliminate the one-time gain on sale was made against combined Laclede and MGE net income amounts. However, if separate Laclede and MGE company information had been provided, this adjustment would only be made to Laclede's ROE, not to MGE's.

⁴ Staff's calculated ROE of 9.60% is slightly overstated in that it reflects the receipt of some amount of net off-system sale revenues and capacity release revenues by the Company which will be flowed back to customers through operation of the Purchased Gas Adjustment Clause. These net revenue amounts are not taken into account in setting the Respondents' base customer rates. Based upon the information available to it, Staff was not able to quantify and remove the earnings impact associated with these net revenue amounts in the period examined.

8. An overearnings complaint case would amount to the equivalent level of time and labor that is put into a rate case and would include a full rate review to potentially establish new rates for the Company. Staff anticipates Respondents will file concurrent rate cases for the Laclede and MGE service territories by no later than April of 2017, in order to continue their ISRS. Given the time and labor that these cases would require, any revision in rates that might result from this complaint would not be in effect by the time of the April 2017 anticipated rate case filings.

9. In addition to this case, which essentially amounts to the equivalent of two utility-filed general rate cases, Staff has an extremely busy caseload in the coming months, all of which have filings scheduled for the near future, to include the Ameren Missouri rate case (Case No. ER-2016-0179), the Kansas City Power & Light Company (“KCPL”) rate case (Case No. ER-2016-0285), the KCP&L Greater Missouri Operations Company (“GMO”) rate case (Case No. ER-2016-0156), and the Empire District Electric Company (“Empire”) sale case (Case No. EM-2016-0213), among others. In addition, there is an unknown amount of future workload associated with Great Plains Energy, Inc.’s acquisition of Westar Energy, Inc.⁵ With such a heavy caseload, Staff has insufficient time and resources to put into this complaint, when there is no credible evidence to support it.

10. For all the reasons stated above, Staff agrees that the complaint should be dismissed.

11. Regarding Respondents’ responses to the applications to intervene by CCM and MIEC, to the extent the Commission is seeking Staff input, Staff agrees that

⁵ Staff has been authorized by the Commission to perform an investigation of this merger and acquisition transaction in Case No. EW-2016-0324.

both applications to intervene were filed past the intervention deadline set in the April 28 order and do not appear to comply with the Commission's Rule on intervention found at 4 CSR 240-2.075.

WHEREFORE, Staff submits its response to Respondents' May 31, 2016 pleadings and agrees that the complaint should be dismissed for the reasons stated herein.

Respectfully submitted,

/s/ Marcella L. Mueth

Marcella L. Mueth
Assistant Staff Counsel
Missouri Bar No. 66098
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4140 (Telephone)
(573) 751-9265 (Fax)
Marcella.Mueth@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were mailed, electronically mailed, or hand-delivered to all counsel of record this 14th day of June, 2016.

/s/ Marcella L. Mueth