

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

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

**REPLY TO LACLEDE'S RESPONSE
TO OPC'S MOTION TO COMPEL**

COMES NOW the Office of the Public Counsel (OPC) and for its Reply to Laclede's Response to OPC's Motion to Compel, states:

1. Laclede Gas Company and its operating unit Missouri Gas Energy (collectively "Laclede") provide natural gas to approximately 43% of all Missouri residents and over 100,000 Missouri businesses.¹ This case is about these ratepayers and the excessive rates they now pay. In the two and a half months since OPC filed this Complaint, the public's attempts to prepare a direct testimony case for the Commission has been frozen by Laclede's refusal to open its books and records for public purview. Laclede's continued efforts to hinder and delay OPC's ability to present its case are not those of a company with nothing to hide.

¹ Laclede serves 1,059,793 residential customer accounts (2015 Annual Reports), multiplied by 2.48 persons per Missouri household (U.S. Census Bureau) = 2,628,286 persons served by Laclede. Divided by the total Missouri population of 5,988,527 (U.S. Census Bureau) = 43% of all Missouri residents live in homes served by Laclede.

2. On behalf of the 2.6 million Missourians receiving gas heat from Laclede, OPC urges the Commission to allow OPC to present its case to the Commission. To do that, however, OPC must have access to Laclede's books and records. OPC recognizes some discovery requests require more effort to answer than others, but everything requested by OPC should be readily available to Laclede to provide responses within twenty days. Laclede's blanket objection to all discovery requests should be dismissed. If an individual discovery request creates a burden, the reason for that burden must be clearly explained. To date, Laclede has provided no such explanation except a blanket objection to over one hundred discovery requests.

3. Rate reviews are typically initiated by the utility seeking to raise rates - it is a rare occurrence that a utility's customers have the means to seek a rate reduction. But that fact should not in any way restrict the public's ability to gather and submit its evidence - evidence that is in the possession of the utility. In Laclede's last rate case filing where the *utility* sought to reset rates, within a week of Laclede's filing the Commission set the matter for a prehearing conference, ordered the parties to file a procedural schedule, and scheduled an evidentiary hearing.² In contrast to the present case where Laclede's *customers* are seeking a rate review, the case has languished for seventy-six days while Laclede refuses to respond to lawful discovery requests. In comparison, within a month of Laclede filing their rate case application in Case No. GR-2013-0171, the Staff issued 177 data requests to Laclede, far exceeding the number of

² Case No. GR-2013-0171, *Order Directing Notice, Suspending Tariff, Setting Hearings, and Directing Filings*, December 27, 2013, EFIS No. 20.

data requests submitted to Laclede by OPC in this case.³ Laclede provided timely twenty-day responses to all Staff data requests.⁴

4. Laclede's unwillingness to comply with the Commission's discovery rules is indicative of Laclede's overall tactic of delaying OPC's efforts at every step of this case. One such delay tactic is Laclede's Motion to Dismiss. Laclede and Staff have filed numerous pleadings in this case that continue to argue their alleged facts are more persuasive than OPC's alleged facts. These parties should be well aware the lawful standard in motions to dismiss is to assume the alleged facts are true - that Laclede is earning a 10.45% return on equity ("ROE") and comparable company ROEs are 9.6%. Accepting these facts as true, the next question to ask is if Laclede is earning enough revenues to cover all costs and an additional profit of 10.45%, whether this a sufficient basis for the Commission to conclude Laclede's rates are unjust and unreasonable and should be reset. The unequivocal answer to this question is yes, the Commission has that authority pursuant to Section 393.140(5) RSMo. Laclede and Staff should know Laclede's characterization of OPC's calculations as conclusions and Laclede's calculations as facts is a frivolous argument that would not be supported by any court of law and is meant only to delay the processing of this Complaint. OPC urges the Commission to eliminate this distraction by denying Laclede's motion to dismiss and ordering Laclede to answer OPC's discovery requests.

5. While Laclede's responses are not surprising, the Staff's responses to OPC's Complaint are troubling. Staff's replies indicate it already established a position in

³ Case No. GR-2013-0171, Staff issued Data Request numbers 1 through 177 between January 8 and January 31, 2014, and Laclede responded answers by February 20, 2014.

⁴ *Id.*

this case before OPC has had an opportunity to present its evidence, raising concerns with the Staff's ability to remain neutral in this matter. OPC anticipates the Staff's witness testimony will only seek to support the conclusion Staff already reached. Since the Staff already stated this case would be a burden on its resources to process other cases, and since the Staff prejudged this case before OPC has had an opportunity to present its evidence in direct testimony, the best course of action would be to dismiss the Staff from participating.

6. Laclede's continued effort to derail its customers' attempts to reset rates is also evident in Laclede's attempt to deny the Missouri Industrial Energy Consumer's ("MIEC") from representing the interests of industrial customers in this case. To that end, Laclede urges the Commission to follow an intervention standard not required by the Commission's rules. It is well known MIEC has represented the interests of industrial customers before the Commission for years, and that their participation in this case is in the public interest. OPC asks the Commission to eliminate this distraction as well, and grant MIEC intervention at the same time it rules on the other motions.

7. OPC urges the Commission to deny Laclede's motion to dismiss, grant OPC's motion to compel, grant MIEC's motion to intervene, and direct the parties to meet in a prehearing conference for the purpose of developing a procedural schedule for hearing this case.

WHEREFORE, the Office of the Public Counsel respectfully offers this reply.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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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 11th day of July 2016.

/s/ Marc Poston
