

**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.)	

**OPC REPLY TO STAFF’S “RESPONSE
TO RESPONDENTS’ MAY 31 PLEADINGS”**

COMES NOW the Office of the Public Counsel (“OPC”) and for its Reply to *Staff’s Response to Respondents’ May 31 Pleadings*.

1. On June 14, 2016, the Public Service Commission Staff (“Staff”) filed *Staff’s Response to Respondents’ May 31 Pleadings* reiterating Laclede Gas Company and Missouri Gas Energy’s (collectively referred to as “Laclede” or “the Company”) Motion to Dismiss the Complaint filed by OPC seeking an investigation of overearnings by the Company.

2. While iterated by OPC in its Response to Laclede’s Motion to Dismiss filed on June 14, 2016, it is important to remind the Commission again a Motion to Dismiss is not the proper venue to argue facts. The real purpose of a Motion to Dismiss is to test whether a Petition is sufficient in describing the claim being placed before the fact finder. “In reviewing the granting of a motion to dismiss for failure to state a claim upon which relief may be granted, the appellate court determines if the facts pleaded and the inferences reasonably drawn therefrom state any ground for relief. *Sullivan v. Carlisle*,

851 S.W.2d 510, 512 (Mo. 1993). All of a plaintiff's averments are assumed to be true. *Nazeri v. Missouri Valley College*, 860 S.W.2d 303, 306 (Mo. banc 1993). No attempt is made to weigh any facts alleged as to whether they are credible or persuasive; instead, the petition is reviewed to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case. *Id.*" *Velting v. City of Kansas City*, 901 S.W.2d 119, 121 (Mo. App. 1995). It is OPC's concern the Commission is not being provided adequate legal guidance on this matter as the basis for granting a Motion to Dismiss is not addressed in Staff's response.

3. Further, Staff echoed Laclede's concerns with the methodology used by OPC to calculate Laclede's return on equity ("ROE") for its latest fiscal year ended September 30, 2015. Staff then agrees with Laclede 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 calculation Staff now says does not result in a fair representation of a utility's earnings is the exact identical calculation Staff supported just shortly over one year ago in the Kansas City Power and Light Company's ("KCPL") rate case number ER-2014-0370. In that matter, Staff explained its preferred method of calculating actual earned ROE for KCPL is to use a beginning equity balance.:

Q. Turning to KCPL's argument that regulatory lag lowered their ROEs; did you complete an analysis of KCPL's actually achieved ROEs over the past several years?

A. Yes, I did. Using data publicly available in KCPL's Form 10-K, filed with the Securities and Exchange Commission ("SEC") each year, I calculated KCPL's annual ROE. My calculation used KCPL's reported net income available for common stockholders as the numerator and KCPL's beginning common stock equity as the denominator. (emphasis added)

Staff not only supported the beginning-equity ROE calculation method, they put forth testimony representing this method as the preferred method. It should be noted, but not controlling, that KCPL also supported this methodology. In its current filing, Staff offers no explanation for why this method should not be used in calculating Laclede's ROE. Further, OPC can find no outside justification for this change in Staff's position.

4. At paragraph 6 of Staff's Response, it states "(r)ather 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." OPC actually agrees in part with Staff on this point. While OPC strongly disagrees its Complaint is not adequately supported as OPC explained in its Reply to Motion to Dismiss, OPC agrees with Staff it should not participate in this proceeding. They have indicated they do not have adequate resources to handle an investigation of this Complaint. The OPC accepts this and agrees it alone can prosecute this matter.

5. As a point of clarification, Staff also confuses the Commission's policy on the treatment of gains and losses with its preferred method of calculating actual earned ROE in utility rate cases. Staff states Laclede "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." This is contrary to the statement made by the Commission that it does not have any policy with respect to the treatment of gains and losses on the sale of utility assets. The Commission addressed the gains on asset sales issue in Case Nos. EO-85-185 and EO-85-224, KCPL:

Traditionally the Commission has treated gains on the sale of utility assets below the line. In Re: Missouri Cities Water, 26 Mo. P.S.C. (H.S.) 1 (1983) and Re: Associated Natural Gas, 26 Mo. P.S.C. (N.S.) 237 (1983), the

Commission treated the gain on depreciable utility property below the line.

However, in those cases the Commission did not base its decision on a shareholder property right theory as the Commission did in Re: Kansas City Power and Light, supra. The Commission stated in both cases that below the line treatment did not indicate a general policy.

In both cases the Commission considered the arguments advanced by Staff in the instant case and considered the reasoning of the District Court of Appeals in the DCC case. In Re: Missouri Cities, the Commission suggested that the gain need not necessarily be treated below the line and discussed methods whereby a sharing of the gain might be accomplished.

Staff asserting there is a Commission policy on this issue is simply erroneous.

6. Further, Staff continued to improperly assert factual arguments by stating: “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.” But this very limited focus ignores other areas that Staff is well-aware suggest Laclede’s rates are unreasonably high and should be investigated. These include the millions of dollars in savings Laclede obtained and continues to obtain thanks to synergies with its acquired utilities such as MGE; that Laclede’s earnings in 2015 were earned in a period when weather was much warmer than normal; and that the calculation of the ROE made by OPC was made using an unreasonably high equity percent - fifty-six percent (56%) - that would actually understate Laclede’s actual ROE using a more reasonable equity percentage. Another area to investigate in resetting Laclede’s rates is whether Laclede’s sale of a service center in St. Louis saw proceeds go to shareholders when costs for constructing a new service center are being assessed to its Missouri ratepayers. OPC believes the

Commission should consider this, as well as many other issues an investigation would reveal before making a final decision on the merits of OPC's filing. All of these issues are known by Staff yet they do not see fit to investigate these matters properly.

7. Finally Staff states "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." As noted earlier, OPC requests that the Commission grant Staff's request and not to participate in this proceeding.

WHEREFORE, the Office of the Public Counsel respectfully submits this reply and urges the Commission to deny Laclede's motion to dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been served to all counsel of record by electronic filing on this 17th day of June 2016.

/s/James M. Owen