

**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 COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its response to the Office of Public Counsel’s Complaint states as follows:

1. On April 26, 2016, 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”) alleging that Laclede and MGE are charging rates that are unjust and unreasonable. In its complaint, OPC requests that the Commission “direct Staff to conduct whatever investigation and recommendations are necessary under the circumstances.”¹

2. Section 386.270, RSMo states:

All rates, tolls, charges, schedules and joint rates fixed by the commission shall be in force and shall be prima facie lawful...until found otherwise in a suit brought for that purpose pursuant to the provisions of this chapter.

3. OPC bears the burden of proof to establish its claim that Laclede’s and MGE’s current rates are no longer just and reasonable. Section 386.430, RSMo states:

¹ Complaint, p. 10.

In all trials, actions, suits and proceedings arising under the provisions of this chapter or growing out of the exercise of the authority and powers granted herein to the commission, the burden of proof shall be upon the party adverse to such commission or seeking to set aside any determination, requirement, direction or order of said commission, to show by clear and satisfactory evidence that the determination, requirement, direction or order of the commission complained of is unreasonable or unlawful as the case may be.

What has been filed in this case to date is incomplete and is inadequate to establish the substance of the claims therein.

4. Because Staff is not the adverse party, it does not bear the burden of proving that Laclede's or MGE's rates are unjust or unreasonable. In addition, Staff has an extremely busy caseload in the coming months, 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.

5. Staff, as well as the Commission, has seen a similar complaint in the recent past, wherein Noranda Aluminum ("Noranda") filed a complaint against Ameren Missouri alleging the rates charged were unreasonable.² Staff's role in that case was limited to a high-level analysis of authorized versus actual earnings.³ In its initial filing in that case, Noranda provided substantially more support⁴ for its claim than OPC has done here. As an example, Noranda calculated some standard ratemaking

² EC-2014-0223.

³ EC-2014-0223 Staff's Concurrence in Procedural Schedules, page 2 states, "Staff's concurrence in these very abbreviated schedules is based on Staff's present understanding that its role in these cases will be limited. In particular, Staff does not now intend to conduct any audit, cost-of-service study, class cost-of-service study, or other extended or exhaustive analyses in either of these cases. The burden of proof is Complainants' to carry and Ameren Missouri has the burden of refuting Complainants' cases. Staff's only burden is to provide whatever input the Commission may request..."

⁴ In addition to its complaint, Noranda filed direct testimony of 2 witnesses to support its claim in EC-2014-0223. In the present case, OPC has only filed a complaint, with no supporting testimony or documentation.

annualization and normalization adjustments to apply against Ameren Missouri's per book financial results, which OPC has apparently not done as part of its analysis of Laclede and MGE's current earnings levels. Nonetheless, in the recent Ameren Missouri earnings complaint case, the Commission ultimately decided that Noranda failed to adequately support its claims.⁵ Similarly in this case, 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.

6. In its complaint, OPC also requests that the Commission "review this Complaint on an expedited basis."⁶ However, OPC's alleged basis for expedited treatment appears to primarily be ISRS cases in which the Commission ruled against OPC's position. The Commission's rule on expedited treatment, 4 CSR 240-2.080(14) provides that:

(14) Any request for expedited treatment shall include the words "Motion for Expedited Treatment" in the title of the pleading. The pleading shall also set out with particularity the following:

- (A) The date by which the party desires the commission to act;
- (B) The harm that will be avoided, or the benefit that will accrue, including a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public, if the commission acts by the date desired by the party; and
- (C) That the pleading was filed as soon as it could have been or an explanation why it was not.

⁵ EC-2014-0223 Report and Order, page 20 states, "A complainant could adequately support a rate adjustment with a cost of service study less extensive than the audit undertaken by Staff if that adjustment can be shown to take into account all relevant factors. But the cost of service study offered by the Complainants in this case did not meet that standard." Page 21 concludes, "The Commission must consider all relevant factors when setting rates. The Complainants have not met their burden to prove that Ameren Missouri's current rates are no longer just and reasonable. Therefore, the Commission will deny and dismiss the complaint."

⁶ Complaint, p. 10.

OPC's request for expedited treatment fails to comply with the foregoing rule and should accordingly be denied.

WHEREFORE, Staff respectfully requests that the Commission deny OPC's request number 4, to "direct Staff to conduct whatever investigation and recommendations are necessary under the circumstances," and also deny OPC's request number 1 to "review this Complaint on an expedited basis." Staff would also note that it does not intend for its silence in this Response on the other requests in OPC's complaint to be construed as agreement with such requests, or even as agreement that such requests would be lawful or reasonable.

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 20th day of May, 2016.

/s/ Marcella L. Mueth