

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

In the Matter of the Application of)
Laclede Gas Company to Change its)
Infrastructure System Replacement) Case No. GO-2016-0332
Surcharge in its Missouri Gas)
Energy Service Territory)

In the Matter of the Application of)
Laclede Gas Company to Change its)
Infrastructure System Replacement) Case No. GO-2016-0333
Surcharge in its Laclede Gas Service)
Territory)

OPC REPLY REGARDING PROCEDURAL MOTIONS

COMES NOW the Office of the Public Counsel (“OPC”) and for its Reply Regarding Procedural Motions, states:

1. On December 9, 2016, OPC filed its Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing.¹ OPC’s motion identified four categories of unlawful and/or unreasonable costs that Laclede Gas Company (“Laclede”) includes in its Infrastructure System Replacement Surcharge (“ISRS”) petitions for its Laclede Gas and Missouri Gas Energy (“MGE”) service territories.

2. On December 19th, Laclede filed a response to OPC’s Motion as well as a Motion to Strike two of those issues. The Commission ordered responses to Laclede’s filing to be filed no later than December 23rd.

¹ All dates are in 2016 unless otherwise denoted.

A. Reply to Laclede's Response to OPC's Motion to Deny Proposed Rate Increases

3. OPC's December 9th motion was in full compliance with the law and is consistent with the timing of OPC's request for a hearing in Laclede's last ISRS petitions, which the Commission specifically concluded was "lawful" after a similar objection by Laclede.² Moreover, the Commission's November 30th order directed parties to reply to the Public Service Commission Staff's ("Staff") Recommendations no later than December 9th. OPC replied per the Order's requirements.

4. Laclede's argument that OPC was required to raise any issue within 60-days is a clear misrepresentation of the law. The 60-day requirement places no restrictions on when any party may raise issues, and only prescribes the time in which the Staff may file a report. Section 393.1015.2(2) RSMo. Laclede's arguments are inconsistent with the plain meaning of the ISRS statutes, which place no procedural requirement on OPC as to when it must raise issues and/or request an evidentiary hearing. The Legislature easily could have placed in the ISRS statute such a procedural requirement on OPC to raise issues but that language simply does not exist.

5. One fact Laclede omitted is their role in the timing of OPC's December 9th response, which was in part due to Laclede unlawfully failing to answer data requests by the due date prescribed by Commission rule 4 CSR 240-2.090(2)(C). OPC issued pertinent data requests to Laclede on November 8th with

² Case Nos. GO-2016-0196 and 0197, *Order Denying Motion for Reconsideration of Procedural Schedule*, April 14, 2016 (EFIS No. 20).

responses required to be provided no later than November 28th - one day before the Staff's recommendations were due. Laclede did not provide its one-page answer until after the close of business hours on Friday, December 2nd - effectively answering the data requests the following Monday, December 5th, a full week after they were due. The next day, December 6th, OPC advised Laclede of its issues with the ISRS petitions and sought an agreement with Laclede to remove the ineligible costs. Laclede did not reply to OPC until December 8th. OPC filed its response to the Staff Recommendation the very next day, December 9th.

6. Laclede's role in delaying OPC's review is also evident in what appears to be a purposeful effort by Laclede to delay its responses to OPC data requests. Laclede's response time to OPC's ISRS data requests is significantly different than Laclede's response time to Staff's ISRS data requests. Of the nineteen data requests issued by the Staff and answered by Laclede through EFIS, Laclede's response time averaged **4.5 days**. Laclede waited until the 20th day to submit responses to all OPC data requests, other than the late responses discussed above, making the average response time to OPC data requests to be greater than **20 days**. In addition, the Staff also issued five data requests to Laclede on or after November 8th and Laclede answered all Staff data requests within one to seven days, while at the same time taking 27 days to provide its one-page answer to OPC's three data requests issued on November 8th. By all appearances, Laclede is purposely delaying its response to OPC in an attempt to thwart the public's ability

to challenge their ISRS costs and then using those delays to blame OPC for not raising issues sooner.

7. OPC issued the majority of its data requests to Laclede on November 3rd but Laclede did not provide answers until November 23rd, just before the holiday break and two business days before the Staff reports were due. Had Laclede wanted OPC to respond sooner, it should have done a better job of ensuring sufficient time to do so by providing answers to data requests as they became available rather than waiting until the very last day to provide answers to all 45 data requests.

8. Laclede also claims incorrectly, and without citations to authority, that OPC did not properly respond to the Staff's recommendations. There is no requirement in the Commission's rules on how a party is to title its response to a Staff ISRS recommendation. OPC chose to respond to the Staff recommendation in the form of a motion to deny the proposed rate increases, and with an alternative request for a hearing, because the Staff did not identify and recommend removal of the ineligible costs. Responding to the omission of a relevant issue and fact is just as permissible as responding to the inclusion of a relevant issue and fact and OPC is well within its rights and obligations to respond to either.

9. OPC would have been fully within its legal rights to simply request a hearing without identifying any issues in detail until direct testimony. Instead, OPC contacted Laclede by phone the day after Laclede responded late to OPC's discovery and explained the basis for OPC's objections. Furthermore, OPC provided

significant detail in its December 9th response and motion with citations to the law and facts that enabled Laclede to fully understand the basis for OPC's objections. OPC has gone above and beyond its legal obligation and effectively provided Laclede with a full understanding of OPC's issues earlier than required.

10. Laclede cites to a Kansas City Power & Light Company ("KCPL") case where the Commission rejected KCPL's attempt to raise an issue in surrebuttal testimony that was not raised in its case-in-chief.³ The basis for the Commission's decision in the KCPL case was 4 CSR 240-2.130(7)(A), which requires direct testimony to include "all testimony and exhibits asserting and explaining that party's entire case-in-chief." In the present case, OPC fully complied with the testimony rule by providing its entire case-in-chief in its direct testimony.

11. Laclede also complains of the timing of the evidentiary hearing because it falls on the first business day after the New Year. It should first be noted that the parties agreed to a schedule proposed by Laclede that included a hearing date of January 10, 2017, and it was the Commission that ordered the January 3, 2017 hearing date, not OPC. Furthermore, Laclede is more responsible for the holiday timing of this case than the Commission or any other party because Laclede chose to submit its petitions when it did, fully aware that the Staff reports would be due two days after the Thanksgiving break and any hearing would need to be held at the end of December or the beginning of January. Additionally, Laclede filed the sixty-day notice of its intent to file its petitions in early June and was expected to

³ Case No. ER-2014-0370, *Report and Order*, p. 54.

file those petitions sixty-days later in early August. Instead, Laclede waited until the last day of September to file, knowing any testimony and hearing would need to be held during the holiday period. Just as Laclede's unlawfully late discovery responses created the problems Laclede now complains about, so did Laclede's decision to time its filings to conflict with the holidays.

12. Had Laclede wanted quicker responses to the Staff's recommendations, it could have asked the Commission to order responses to be filed sooner. Likewise, if Laclede wanted OPC to raise its issues by November 29th, it could have filed a motion asking the Commission to order as much. Laclede did not make such requests and OPC was under no obligation to make a filing any earlier than it did.

13. While the merits of the issues will be fully explored by the evidence and arguments of the case, OPC is compelled to briefly respond to Laclede's claim that there is only a "small amount" of plastic mains and plastic service lines being replaced. This claim is not supported by Laclede's work orders, which show the ineligible plastic main and plastic service line replacements could include more than a third of the overall claimed ISRS costs. This is not a "small amount" of "interspersed" plastic as Laclede characterizes it but instead includes numerous lengthy plastic pipeline segments and a substantial portion of the claimed costs.

14. Granting Laclede's request that the Commission find "OPC raised the four issues in the OPC Motion too late to meet the statutory requirements or to fairly process those issues in this case" would be an unlawful violation of OPC's

right to due process under the law. OPC fully complied with all procedural requirements and all issues have been properly raised. To find otherwise would do a grave disservice to the public and would further perpetuate what will prove to be a significant and unlawful overcharging of customers in a manner that calls into question the ability of anyone, including the Commission, to properly protect the public against ISRS abuse.

B. Reply to Laclede’s Motion to Strike Certain Issues

15. Laclede’s response included a motion to strike two issues: incentive compensation as well as Laclede including two months of estimated costs in its petition without any auditable documentation. The motion should be denied because both issues are properly before the Commission.

a. Earnings-Based Incentive Compensation

16. Laclede’s motion acknowledged that its ISRS “may include some earnings-based incentive compensation.” Accordingly, the starting point of this discussion is that Laclede does not deny its ISRS includes such costs despite years of Commission decisions finding those costs are not to be charged to ratepayers.

17. Laclede argues the particular costs (in this case earnings-based incentive compensation) it assigns to an ISRS plant project is entirely a “ratemaking issue that is properly determined in a rate case.” Laclede bases this argument upon Section 393.1015.2(2) RSMo, which states:

The staff of the commission may examine information of the gas corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1009 to 393.1015, and to confirm proper calculation of the proposed charge, and may submit

a report regarding its examination to the commission not later than sixty days after the petition is filed. No other revenue requirement or ratemaking issues may be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of sections 393.1009 to 393.1015.

This subsection includes two provisions relevant to this discussion. First, it establishes that the purpose of the review is to “confirm the underlying cost are in accordance with the” ISRS statutes. Second, it establishes that other revenue requirement or ratemaking issues may not be examined. Each provision supports a conclusion that an ISRS petition is an appropriate venue for considering whether the costs Laclede charges to its ISRS work orders are permissible.

18. Underlying Costs: To “confirm that the underlying costs are in accordance with” the ISRS statutes, one must begin by looking to see what costs are permitted under the ISRS statutes. For replacement projects, the eligible costs are those costs the Commission allows a utility to charge customers for replacing “mains, valves, service lines, regulator stations, vaults, and other pipeline system components.” Section 393.1009(5)(a) RSMo. The ISRS statutes define “ISRS costs” as “depreciation expenses and property taxes that will be due within twelve months of the ISRS filing.” Section 393.1009(7) RSMo. This means the permissible costs include only those costs the Commission permits to be included in depreciation expense and property taxes for plant. Since the Commission excludes earnings-based incentive compensation from the depreciation expense in plant, by definition “ISRS costs” also excludes earnings-based incentive compensation. Accordingly, the issue is properly raised here so that these ineligible costs may be removed.

19. Other Revenue Requirement or Ratemaking Issues: “Other revenue requirement or ratemaking issues” that cannot be included in an ISRS include any revenue or rate issues “other” than those included in the calculation of ISRS costs. In this instance, earnings-based incentive compensation is not an “other” ratemaking issue because Laclede has included that cost in these ISRS petitions claiming them as proper plant costs. An impermissible “other” revenue requirement issue, for example, would occur if OPC were to argue that reductions to Laclede’s payroll offset the need for the ISRS rate increases. This would be an impermissible “other” issue because it does not involve a cost included in Laclede’s calculation of the ISRS costs. Any cost that is claimed to be a cost of an ISRS-eligible project is open for challenge in an ISRS petition. Laclede does not get a free pass to include any cost it wants in a plant project and the ISRS petition is the best venue for excluding impermissible costs before they are charged to ratepayers. Otherwise, Laclede could include millions of dollars in other impermissible costs in its ISRS petitions, such as lobbying costs, and charge those costs to ratepayers under the argument that lobbying is a rate case issue that cannot be addressed until the next rate case. Once Laclede charges a cost to an ISRS project, that cost is properly before the Commission and ripe for challenge, but only to the limited extent of its inclusion in the ISRS. In this case, OPC is permitted to raise the issue of earnings-based incentive compensation but is limited to addressing that issue only to the extent such costs are included in the ISRS.

20. Laclede cites to a past Staff ISRS audit recommendation performed by OPC's witness in this case, Mr. Charles Hyneman, when he was employed as a Staff auditor. The cited quote fully supports OPC's position because it explains the "second part of Staff's examination consisted of a review of the plant work order documentation supporting the inclusion of the costs of specific gas plant projects in Laclede's ISRS application." The quote states specifically that part of an ISRS examination is to look at the costs the company has included in its gas plant projects. This is precisely what OPC is doing when it raises this issue. OPC identified an ineligible cost in Laclede's gas plant work orders and properly raised that issue in these petitions so that such costs can be properly excluded.

b. Two Months of Estimated and Unsupported Costs

21. The last issue Laclede seeks to strike is the practice of submitting two months of costs and supporting documentation weeks after the petitions are filed. Not allowing OPC to argue the reasonableness of the practice under the specific facts of this case denies OPC of our ability to raise this issue and would be a violation of the public's right to due process.

WHEREFORE, the Office of the Public Counsel respectfully submits this reply and urges the Commission to hear these important issues and reject Laclede's attempts to continue charging customers unlawfully and unreasonably.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston

Marc D. Poston (#45722)

Chief Deputy Counsel

PO Box 2230

Jefferson City MO 65102

(573) 751-5558

(573) 751-5562 FAX

marc.poston@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 23rd day of December 2016.

/s/ Marc Poston
