

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

In the Matter of the Application of	)	
Laclede Gas Company to Change its	)	Case No. GO-2016-0196
Infrastructure System Replacement	)	Tariff Filing No. YO-2016-0193
Surcharge in its Laclede Gas Service	)	
Territory.	)	

In the Matter of the Application of	)	
Laclede Gas Company to Change its	)	Case No. GO-2016-0197
Infrastructure System Replacement	)	Tariff Filing No. YO-2016-0194
Surcharge in its Missouri Gas Energy	)	
Service Territory.	)	

**REPLY TO LACLEDE’S MOTION TO STRIKE TESTIMONY**

**COMES NOW** the Office of the Public Counsel (“OPC”) and for this Reply to Laclede Gas Company’s Motion to Strike Testimony, states:

1. On April 22, 2016, Laclede Gas Company (“Laclede”), on behalf of its two Missouri operating units, Laclede Gas (“Laclede Gas”) and Missouri Gas Energy (“MGE”), filed its Motion to Strike Portions of Rebuttal Testimony of OPC Witness Charles R. Hyneman (“Motion”). Laclede’s Motion requests the Public Service Commission (“Commission”) strike all substantive portions of OPC’s rebuttal testimony.

2. The Commission must deny the Motion because the testimony was proper rebuttal as it was directly responsive to the testimonial evidence of Laclede and/or the Commission’s Staff (“Staff”). The Commission’s rules of evidence provide:

For the purpose of filing prepared testimony, direct, rebuttal and surrebuttal testimony are defined as follows:

- (A) Direct testimony shall include all testimony and exhibits asserting and explaining that party’s entire case-in-chief;

(B) Where all parties file direct testimony, rebuttal testimony shall include all testimony which is responsive to the testimony and exhibits contained in any other party's direct case. A party need not file direct testimony to be able to file rebuttal testimony.<sup>1</sup>

3. The parties filed direct testimony on April 18, 2016. In direct testimony, parties are to file all testimony and exhibits explaining each party's "case-in-chief."<sup>2</sup> OPC's direct testimony is fifteen pages in length and provides explanation of why an infrastructure system replacement surcharge ("ISRS") petition including estimated future plant and expenses is not permitted by law and why allowing ISRS petitions that include estimated "future plant and plant expenses is bad policy that eliminates one of the few ratepayer protections included in the ISRS statues and the ISRS rule."<sup>3</sup>

4. Laclede's direct testimony and entire "case-in-chief," in comparison, was four pages in length and stated its purpose was to support the accuracy and results of the Staff's Recommendation and Memoranda filed in the two ISRS cases.<sup>4</sup> In other words, Laclede, the party with the burden of proving its proposed surcharge increases are just and reasonable,<sup>5</sup> based their entire case-in-chief not upon any facts specific to its requested rate increases but upon nothing more than the Staff's review. Mr. Glenn Buck's entire direct testimony is summarized in his statement, "[b]ased upon my review of the Staff Recommendation and Memorandum in each case, I agree that Staff has accurately determined the ISRS-eligible costs that Laclede Gas and MGE are entitled to

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<sup>1</sup> 4 CSR 240-2.130(7)

<sup>2</sup> *Id.*

<sup>3</sup> Direct Testimony of Charles R. Hyneman, Exhibit (Ex.). 11, p. 3.

<sup>4</sup> Direct Testimony of Glenn W. Buck, Ex. 3, p.3.

recover through their respective ISRS charges pursuant to the ISRS statute and the Commission's rules."<sup>6</sup> Mr. Buck's testimony takes the unusual posture as an outside observer of his employer's petition and only supported the Staff's position. Attached to Mr. Buck's testimony were the two Staff Recommendations and Memoranda, which Mr. Buck states are "incorporated herein for all purposes."<sup>7</sup> Laclede's reliance upon nothing but the Staff rather than its own facts and its incorporation for all purposes the Staff's Recommendations and Memoranda was the entire extent of the Laclede direct testimony to which OPC needed to respond.

5. The Staff filed three direct testimonies presenting its entire case-in-chief<sup>8</sup> that included undisputed rate design calculation testimony and testimonies from the two auditors who performed Staff audits for Laclede Gas and MGE. The auditor's testimonies included as exhibits the two Staff Recommendations and Memoranda. Aside from the Staff Recommendations and Memoranda, Staff's testimony only explains its conclusion that Staff had adequate time to review the true-up information.

6. It became immediately clear from the direct testimonies that Staff and Laclede were basing their case-in-chief mostly upon the attached exhibits – Staff's Recommendations and Memoranda. Rebuttal testimony would necessarily respond mostly to the facts and assertions made in the exhibits. Again, the Commission's rules

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<sup>5</sup> Section 393.150.2 RSMo states in part, "[a]t any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the gas corporation."

<sup>6</sup> Direct Testimony of Glenn W. Buck, Ex. 3, p. 4 (emphasis added).

<sup>7</sup> *Id.*

<sup>8</sup> Direct Testimony of David Sommerer, Ex. 6; Direct Testimony of Brian Wells, Ex. 5; Direct Testimony of Jennifer K. Grisham, Ex. 7.

state specifically that rebuttal testimony “is responsive to the testimony **and exhibits** contained in any other party’s direct case.”<sup>9</sup>

7. On April 21, 2016, OPC filed rebuttal testimony.<sup>10</sup> OPC’s rebuttal testimony is responsive to the Laclede and Staff direct testimonies and incorporated exhibits.<sup>11</sup> Laclede’s and Staff’s incorporated exhibits raised a point not addressed in OPC’s direct case – that while this case represents just one ISRS increase request, it is in fact part of a series of ISRS increases going back to each operating unit’s respective rate case. The Staff Memoranda provided the revenue increases for each prior ISRS and the cumulative ISRS revenue, which highlighted a concerning trend of ISRS increases.<sup>12</sup>

8. The manner in which the ISRS increases were presented in the Staff Memoranda did not explain the true impact on Laclede’s customer base because it did not show the concerning trend of Laclede’s increasing ISRS requests. OPC’s rebuttal testimony identifies the Staff Recommendation where the ISRS background is presented and responds by addressing Laclede’s recent trend as to how that trend negatively impacts the Staff and OPC’s ability to conduct meaningful reviews of ISRS petitions. As explained by Mr. Hyneman, the ever-increasing ISRS costs limits the ability of a 60-day audit to review all costs, which is further limited by the manner in which Laclede

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<sup>9</sup> 4 CSR 240-2.130(7)(B) (emphasis added).

<sup>10</sup> Rebuttal Testimony of Charles R. Hyneman, Ex. 11.

<sup>11</sup> OPC’s rebuttal testimony originally stated it was responsive to the direct testimony filed by Laclede because Laclede is the party with the burden of proving its proposed rate increases are just and reasonable (Section 393.150.2 RSMo). To be accurate, however, OPC’s testimony actually responded to the direct testimony of both Laclede and Staff. During the evidentiary hearing, OPC made that correction, and therefore, the testimony offered by OPC correctly states that it is responsive to Laclede and Staff.

<sup>12</sup> Direct Testimony of Glenn W. Buck, Ex. 3, Schedule GWB-1, pp. 8 and 20.

provides the parties with supporting documentation. This is the extent of OPC's rebuttal testimony and is wholly appropriate and consistent with Commission rules.<sup>13</sup>

9. It should also be noted OPC was not required to file direct testimony. The Commission's rule 4 CSR 240-2.130(7)(B) states "[a] party need not file direct testimony to be able to file rebuttal testimony." Since OPC was under no obligation to file direct testimony, it could have filed its entire testimony in rebuttal testimony since Laclede has the burden of proving its proposed rate increases are just and reasonable.<sup>14</sup> OPC should not now be penalized for providing Laclede and Staff with OPC's case-in-chief and providing those parties with an opportunity to respond in rebuttal.

10. Laclede's Motion cites to no rule or statute it alleges OPC's testimony violated, which is required in pleadings to the Commission.<sup>15</sup> Moreover, Laclede cites to no authority for the premise that OPC is precluded from providing the Commission with evidence in rebuttal that was in its possession when it filed direct testimony as there are no such requirements on testimony because it would severely restrict a party's ability to represent its interests. OPC and all other parties would need to determine in every contested case whether any document in its possession could *possibly* be necessary to respond to whatever testimony other parties raise in their direct testimony and include all such documents in its direct testimony. Such a burdensome practice is impractical, would lead to massive direct testimonies, and would discriminate against those parties with the least amount of resources, namely OPC.

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<sup>13</sup> 4 CSR 240-2.130(7).

<sup>14</sup> Section 393.150.2 RSMo.

<sup>15</sup> 4 CSR 240-2.080(4) states, "Each pleading shall include a clear and concise statement of the relief requested, a specific reference to the statutory provision or other authority under which relief is requested, and a concise statement of the facts entitling the party to relief."

11. If Laclede's Motion had any merit, Laclede should also move to strike its own witnesses' testimony. Laclede was well aware of the reasons OPC opposed the Laclede/Staff practice of updating ISRS costs during the audit yet chose not to raise a single point in direct testimony addressing those reasons. Instead, Laclede simply stated "me too" to the Staff's Recommendations and Memoranda. Then, in rebuttal testimony, Laclede provided its evidence as to why in its opinion that practice is appropriate.<sup>16</sup> Laclede's rebuttal testimony provides thirteen pages of its rationale for the update practice and attaches as exhibits a number of Work Order Authorization Sheets that were clearly in Laclede's possession at the time it filed its direct testimony. Laclede's hypocritical arguments should be dismissed.

WHEREFORE, the Office of the Public Counsel offers this reply to Laclede's Motion and requests the Commission deny the Motion for the reasons stated herein and accept OPC's Exhibit 11 into the record.

Respectfully submitted,

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<sup>16</sup> Rebuttal Testimony of Glenn W. Buck, Ex. 4, pp. 2-15.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to all counsel of record this 27<sup>th</sup> day of April 2016:

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