

**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)

APPLICATION FOR REHEARING

COMES NOW the Office of the Public Counsel (“OPC”) and for its Application for Rehearing of the Public Service Commission’s (“Commission”) January 18, 2017 Report and Order (“Order”), states as follows:

1. OPC seeks rehearing of the Order approving a rate increase through the Infrastructure System Replacement Surcharge (“ISRS”) for costs incurred replacing existing plastic mains and service lines that were operating safely and without impairment. The Order is unlawful in that it raises rates for costs that are not eligible under Section 393.1009(3) and Section 393.1009(5)(a) RSMo. The Order is also unlawful under Sections 393.130 RSMo in that it raises the rates paid by Laclede Gas Company’s (“Laclede”) residential and business customers in violation of the requirement that all rates be “just and reasonable and not more than allowed by law.” The Order is also unreasonable in that the findings

of fact on the plastic replacement issue are not supported by competent and substantial evidence, are arbitrary and capricious, are against the weight of the evidence, and constitute an abuse of the Commission's discretion.

2. The costs at issue in this application are the costs Laclede incurred due to a new strategy it developed just five years before it filed the petitions in this case.¹ Instead of replacing only the section of cast iron or steel pipe that was worn out or deteriorated, Laclede now replaces everything; often replacing "entire neighborhoods" including newly installed sections of plastic pipe that are not worn out or deteriorated.

3. Costs incurred replacing the disputed plastic pipe cannot lawfully be recovered through the ISRS because the plastic replacements are not "installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or in deteriorated condition." Section 393.1009(5)(a) RSMo. First, there is no state or federal safety requirement mandating the replacement of safe plastic pipe that is not worn out or deteriorated. The Commission's gas safety rules, 4 CSR 240-40.030, require Laclede to replace only the section of pipe that has become unsafe. Second, to be an eligible cost, it must be incurred replacing infrastructure that is "worn out or in deteriorated condition." The costs incurred replacing miles of plastic mains and service lines are ineligible because the replaced pipe was not worn out or in deteriorated condition. Accordingly, the Order unlawfully raises rates through the surcharge for costs that fail these two important qualifying criteria.

4. The Order also issues a number of unreasonable findings that are not supported by competent and substantial evidence, are contrary to the weight of the evidence, are arbitrary and capricious, and constitute an abuse of the Commission's discretion. The following findings are among the many factual findings that are unreasonable and should be reheard:

- *“...replacing the plastic pipe was an essential and indispensable step in completing the cast iron and steel main replacement programs.”*
- *“...the plastic pipes that are being replaced were installed to fix an immediate problem and intended to remain until Laclede or MGE could schedule the entire main replacement.”*
- *“The patches of plastic pipe varied from just a few feet to several hundred feet in length.”*
- *“...the mains could not be replaced without replacing the service lines.”*
- *“...once installed, these patches become part of the facility that is being replaced.”*
- *“...the incidental replacement of plastic pipe connected to cast iron or steel, is not discrete and separate.”*
- *“...when Laclede and MGE replace the deteriorated and worn out cast iron and steel, some plastic pipe is also incidentally replaced.”*
- *“The relocation of the mains further necessitated the replacement of the service lines.”*
- *“These lines were generally in new locations...and required that service lines connect to the main line and enter the customers' buildings in different locations than the old lines.”*

¹ Transcript, p. 65.

- *“...the more patches there are in a pipe, the more vulnerable that pipe is to leaks, which could cause a degradation of safety.”*
- *“...not allowing recovery of the portions of the main replacement projects that incidentally consist of plastic pipe would be a disincentive to the gas utilities to replace deteriorated pipelines containing portions of plastic.”*
- *“Pragmatically, that result would be troubling, but it would also be contrary to the legislative purpose of the ISRS statutes.”*
- *“...each project that replaced cast iron, steel, and plastic pipes contemporaneously were all part of a single segment of pipeline that was worn out or deteriorated.”*
- *“...because the plastic pipe in this case was an integral component of the worn out and deteriorated cast iron and steel pipe...the cost of replacing it can be recovered.”*
- *“By retiring the newer plastic patches, Laclede reduces the depreciation expenses related to that plastic pipe and customers receive a reduction in ISRS rates accordingly.”²*

The number of erroneous fact findings that are contrary to the weight of the evidence are significant and are in many respects contrary to 4 CSR 240-40.030. OPC requests rehearing regarding these findings that were central to the Commission’s reasons for allowing millions of dollars of costs incurred replacing safely-functioning plastic pipe to be included in these ISRS rate increases.

5. The Order also overlooked and ignored relevant and undisputed evidence in the case, including evidence proving the real reason for the change in replacement strategy is due to Laclede’s decision to increase the pressure on its system from low to intermediate pressure. Throughout the evidentiary record this

² Order, pp. 11-12, 15-16, 19-21.

fact is proven repeatedly, including testimony by Laclede's own witness, yet the Order makes no mention of this reason for Laclede's new plastic replacement strategy. The Order's lack of recognition of this important fact, and other facts that disprove the Order's fact findings, lead directly to many of the erroneous factual findings identified above.

6. The Order also states that Laclede's new strategy is to relocate the main between the sidewalk and the street and concludes that “[t]he relocation of the mains further necessitated the replacement of the service lines.”³ However, facility relocations are not eligible for ISRS unless they are required by an entity with eminent domain authority. Section 393.1009(5)(c) RSMo. Replacing service lines incidental to these ineligible relocations are likewise not eligible under Section 393.1009(5) RSMo under the facts as presented on the record.

7. Lastly, the Order misstates OPC's argument and applies an incorrect legal standard for ISRS replacements when it states:

Public Counsel argues that Laclede and MGE have not shown that replacing plastic pipe was done “to comply with state or federal safety requirements” because the existing facilities were not “worn out or deteriorated.” To determine eligibility, the Commission must determine if the existing facilities were worn out or deteriorated.⁴

The replacements of safely-functioning plastic pipe are ineligible because they are neither required by a state or federal safety requirement nor are they replacing infrastructure that is worn out or in deteriorated condition.

³ Order, p. 20.

⁴ Order, pp. 19-20, emphasis added.

WHEREFORE, the Office of the Public Counsel respectfully requests rehearing of the Commission's January 18, 2017 Report and Order pursuant to the authority provided by Section 386.500 RSMo.

Respectfully submitted,

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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 27th day of January 2017.

/s/ Marc Poston
