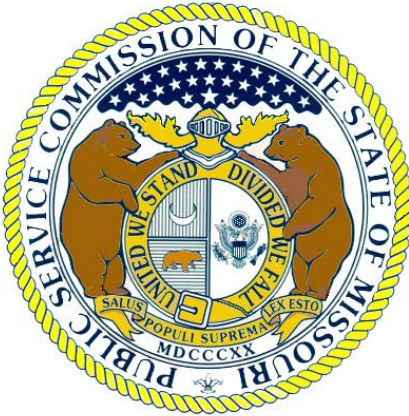


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Application of Laclede Gas)
Company to Change its Infrastructure System)
Replacement Surcharge in its Missouri Gas)
Energy Service Territory)

File No. GO-2016-0332

In the Matter of the Application of Laclede Gas)
Company to Change its Infrastructure System)
Replacement Surcharge in its Laclede Gas)
Service Territory)

File No. GO-2016-0333

REPORT AND ORDER ON REMAND

Issue Date: September 20, 2018

Effective Date: October 1, 2018

**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) **File No. GO-2016-0332**
Replacement Surcharge in its Missouri Gas)
Energy Service Territory)

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

APPEARANCES

Appearing for **SPIRE MISSOURI, INC.:**

Michael C. Pendergast, Fischer & Dority, P.C., 101 Madison, Ste. 400,
Jefferson City, Missouri, 65101.

Rick Zucker, Zucker Law LLC, 423 (R) South Main St., St. Charles, Missouri,
63301

Appearing for **OFFICE OF THE PUBLIC COUNSEL:**

Lera Shemwell, Senior Public Counsel, and **John Clizer**, Associate Public Counsel,
PO Box 2230, 200 Madison St., Ste. 650, Jefferson City, Missouri, 65102-2230.

Appearing for the **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

Jeffrey A. Keevil, Deputy Staff Counsel, **Mark Johnson**, Senior Counsel, and
Whitney Payne, Associate Counsel, PO Box 360, 200 Madison Street,
Jefferson City, Missouri 65102.

SENIOR REGULATORY LAW JUDGE: Michael Bushmann

REPORT AND ORDER ON REMAND

I. Procedural History

On September 30, 2016, Laclede Gas Company filed applications and petitions with the Missouri Public Service Commission (“Commission”) to change its Infrastructure System Replacement Surcharge (“ISRS”) in its Missouri Gas Energy and Laclede Gas Service territories (collectively, “Spire Missouri”)¹. Spire Missouri requested an adjustment to its ISRS rate schedule to recover costs incurred in connection with infrastructure system replacements made during the period March 1, 2016 through October 31, 2016. The Office of the Public Counsel (“OPC”) filed a motion requesting that the Commission reject the petition or schedule an evidentiary hearing. The Commission held an evidentiary hearing on January 3, 2017 (“1st hearing”).

On January 18, 2017, the Commission issued a Report and Order permitting Spire Missouri to file new tariffs to recover certain ISRS revenues, including plastic pipe replacements. That Report and Order is attached hereto as Attachment A. OPC appealed the Report and Order to the Missouri Western District Court of Appeals (WD80544), challenging the Commission’s decision that certain plastic pipe replacements were eligible ISRS costs.

On November 21, 2017, the Court of Appeals issued an opinion (WD80544) which held that recovery of costs for replacement of plastic components that are not worn out or in a deteriorated condition is not available under ISRS. The Court reversed the Commission’s Report and Order “as it relates to the inclusion of the replacement costs of the plastic components in the ISRS rate schedules, and the case is remanded for further

¹ The company subsequently underwent a corporate reorganization and changed its name to Spire Missouri, Inc. with East and West service territories.

proceedings consistent with this opinion”.² The Court’s opinion is attached hereto as Attachment B. On March 7, 2018, the Court of Appeals issued the mandate in the appeal after the Supreme Court of Missouri denied transfer.

In compliance with the Court of Appeals’ opinion remanding these cases back to the Commission for further proceedings, the Commission conducted oral arguments and an evidentiary hearing to receive additional evidence.³ In total, the Commission admitted the testimony of ten witnesses and 29 exhibits into evidence and took official notice of several documents. Post-hearing briefs were filed on September 6, 2018, and the case was deemed submitted for the Commission’s decision on that date when the Commission closed the record.⁴

II. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

1. Laclede Gas Company changed its name to Spire Missouri, Inc. on August 30, 2017. Spire Missouri is an investor-owned gas utility providing retail gas service to large portions of Missouri through its two operating units or divisions, Spire Missouri East (f/k/a Laclede Gas Company) and Spire Missouri West (f/k/a Missouri Gas Energy).⁵

² *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 841 (Mo. App. 2017), *reh’g and/or transfer denied* (Dec. 14, 2017), *transfer denied* (Mar. 6, 2018).

³ Transcript (“Tr.”), Volume 3.

⁴ “The record of a case shall stand submitted for consideration by the commission after the recording of all evidence or, if applicable, after the filing of briefs or the presentation of oral argument.” Commission Rule 4 CSR 240-2.150(1).

⁵ Amended Report and Order, *In the Matter of the Laclede Gas Company’s Request to Increase Its Revenues for Gas Service*, issued March 7, 2018, File No. GR-2017-0215, p. 5, 11.

2. Spire Missouri is a “gas corporation” and a “public utility”, as each of those phrases is defined in Section 386.020, RSMo 2016.

3. The Office of the Public Counsel (“OPC”) “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.”⁶ OPC “shall have discretion to represent or refrain from representing the public in any proceeding.”⁷ OPC did participate in this matter.

4. The Staff of the Missouri Public Service Commission (“Staff”) is a party in all Commission investigations, contested cases and other proceedings, unless it files a notice of its intention not to participate in the proceeding within the intervention deadline set by the Commission.⁸

5. An ISRS is a statutorily authorized rate adjustment mechanism tool utilized by eligible gas corporations to recover the cost of certain infrastructure replacements by establishing and updating a surcharge on a customer’s bill.⁹ A qualifying gas corporation files an ISRS petition with the Commission seeking authority to recover the depreciation expense and return associated with eligible net plant additions, as well as amounts associated with property taxes for those additions, outside of a general rate case.¹⁰

6. Staff performs an ISRS audit when a petition to change an ISRS is filed.¹¹ By statute, Staff may file a report of its audit within 60 days from the time an ISRS petition is filed.¹²

⁶ Section 386.710(2), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

⁷ Section 386.710(3), RSMo 2016; Commission Rules 4 CSR 240-2.010(10) and (15) and 2.040(2).

⁸ Commission Rules 4 CSR 240-2.010(10) and (21) and 2.040(1).

⁹ Staff Ex. 6 (1st hearing), Oligschlaeger Rebuttal, p. 3.

¹⁰ *Id.*

¹¹ Staff Ex. 3 (1st hearing), Sommerer Direct, Schedule DMS-d2.

¹² Section 393.1015.2(2), RSMo 2016.

7. On September 30, 2016, Spire Missouri filed applications and petitions (“Petitions”) seeking an adjustment to its ISRS rate schedule for its East and West service territories to recover costs incurred in connection with eligible infrastructure system replacements made during the period March 1, 2016 through October 31, 2016.¹³

8. Spire Missouri attached supporting documentation to its Petitions for the plant additions completed since the last approved ISRS change. This included documentation identifying the type of addition, utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense.¹⁴ The company also provided estimates of capital expenditures for projects completed through October 2016¹⁵, which were subsequently replaced with updated actual cost information and provided to Staff and OPC.¹⁶

9. Spire Missouri also attached tables to its Petitions identifying the state or federal safety requirement, with a citation to a state statute or Commission rule, mandating each work order.¹⁷

10. The Commission conducted an evidentiary hearing on January 3, 2017, and the Commission issued its Report and Order on January 18, 2017, concluding that the plastic pipe was an integral component of the worn out and deteriorated cast iron and steel pipe, so Spire Missouri could recover the cost of replacing the plastic pipe.¹⁸

11. OPC filed a notice of appeal, challenging the Commission’s decision that certain plastic pipe replacements were eligible ISRS costs.

¹³ Laclede Ex. 4 and 5 (1st hearing), p. 2.

¹⁴ Laclede Ex. 4 and 5 (1st hearing), Appendix A and B.

¹⁵ *Id.*

¹⁶ Staff Ex. 2 (1st hearing), Schedule JKG-d1, p. 4.

¹⁷ Laclede Ex. 4 and 5 (1st hearing), Appendix C.

¹⁸ Report and Order, File Nos. GO-2016-0332 and GO-2016-0333, p. 20.

12. In its briefs on appeal, OPC requested three times that the Court of Appeals remand the case back to the Commission with instructions to approve temporary rate adjustments designed to flow through to Spire Missouri's customers the excess amounts that were collected by Spire Missouri, plus interest, pursuant to Section 386.520.2(2), RSMo.¹⁹

13. The Missouri Western District Court of Appeals issued an opinion (WD80544) on November 21, 2017, which held that recovery of costs for replacement of plastic components that are not worn out or in a deteriorated condition is not available under ISRS. The Court reversed the Commission's Report and Order "as it relates to the inclusion of the replacement costs of the plastic components in the ISRS rate schedules, and the case is remanded for further proceedings consistent with this opinion".²⁰ The Court's order did not include instructions regarding a temporary rate adjustment. Spire Missouri and the Commission applied for rehearing and transfer to the Supreme Court, which were denied, and the Court of Appeals issued its mandate on March 7, 2018.

14. On December 13, 2017, several parties in Spire Missouri's then-pending general rate cases, GR-2017-0215 and GR-2017-0216 ("rate cases") filed a Partial Stipulation and Agreement to resolve certain issues, including ISRS. The entire text of the ISRS section states "As required by Commission rules, the Company's current ISRS shall be reset to zero upon the effective date of new rates in this proceeding. Plant in service

¹⁹ Commission Ex. A, Initial Brief of the Office of the Public Counsel, p. 5-6, 36-37; Commission Ex. B, Reply Brief of the Office of the Public Counsel, p. 27.

²⁰ *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 841 (Mo. App. 2017), *reh'g and/or transfer denied* (Dec. 14, 2017), *transfer denied* (Mar. 6, 2018).

additions for inclusion in a future ISRS shall be limited to additions subsequent to September 30, 2017.”²¹

15. On March 7, 2018, the Commission issued an Amended Report and Order in the rate cases stating that the Partial Stipulation and Agreement was not objected to, so it became unanimous. The Commission approved the partial stipulation and ordered the parties to comply with those terms. The Amended Report and Order was ordered to become effective on March 17, 2018.²²

16. On April 19, 2018, new rates for Spire Missouri became effective in the rate cases, which incorporated into base rates eligible costs previously reflected in Spire Missouri’s ISRS.²³ The existing ISRS was reset to zero.²⁴

17. After these cases were remanded, Spire Missouri provided all work order authorizations for projects totaling over \$25,000, except for open blanket work orders. A blanket work order is a work order related to ongoing projects that will not close in a certain period of time.²⁵

18. Staff reviewed all of the work order authorizations provided by the company to determine the feet of main and service lines replaced and retired by the type of pipe (plastic, cast iron, steel, etc.). Staff applied the actual individual plastic main and services line percentages to the work order cost to determine the value of the replacement of plastic pipe for the work order. Staff did not remove any amounts for work orders that were

²¹ Partial Stipulation and Agreement, *In the Matter of Laclede Gas Company’s Request to Increase Its Revenues for Gas Service*, GR-2017-0215, and *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy’s Request to Increase Its Revenues for Gas Service*, GR-2017-0216, p. 6.

²² Amended Report and Order, *In the Matter of Laclede Gas Company’s Request to Increase Its Revenues for Gas Service*, GR-2017-0215, and *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy’s Request to Increase Its Revenues for Gas Service*, GR-2017-0216, March 7, 2018.

²³ Order Approving Tariff in Compliance with Commission Order, *In the Matter of Laclede Gas Company’s Request to Increase Its Revenues for Gas Service*, GR-2017-0215, and *In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy’s Request to Increase Its Revenues for Gas Service*, GR-2017-0216, issued April 4, 2018.

²⁴ Section 393.1015.6, RSMo 2016.

²⁵ Ex. 101, Bolin Direct, p. 3-4.

associated with relocations required by a governmental authority, encapsulation work orders, and meter and regulator replacement work orders.²⁶

19. For work order authorizations that Spire Missouri did not provide, i.e., those less than \$25,000 and blanket work orders, Staff calculated an average of plastic mains and service lines replaced for the work order authorizations that had actual information provided and applied that percentage to work order authorizations that were not provided.²⁷

20. Using this methodology to calculate the replacement costs for plastic pipes, Staff determined that Spire Missouri collected ineligible replacement costs through its ISRS in the amounts of \$827,159 for Spire Missouri West and \$2,283,628 for Spire Missouri East.²⁸

21. In evaluating Spire Missouri's work orders, Staff did not consider any cost savings resulting from Spire Missouri's replacement program. Staff only looked at the percentage of plastic pipe replaced.²⁹

22. Staff's witnesses provided credible testimony on the correct methodology for determining the costs of ineligible plastic pipe replacements, and Staff's evidence on this issue was the best evidence presented at the hearing. OPC also presented evidence of the replacement costs for plastic pipes, but Staff's calculations were based on more work orders and are more accurate.³⁰

23. Some of the plastic pipes that Spire Missouri replaced or retired in place are not worn out or in a deteriorated condition.³¹ Spire Missouri did not conduct a review to

²⁶ Ex. 101, Bolin Direct, p. 4.

²⁷ Ex. 101, Bolin Direct, p. 4.

²⁸ Ex. 101, Bolin Direct, Schedule KKB-d8.

²⁹ Tr. Vol. 3, p. 451.

³⁰ Tr. Vol. 3, p. 452.

³¹ Tr. Vol. 3, p. 368.

determine if that plastic pipe was worn out or deteriorated before replacing it.³² The polyethylene plastic pipe that Spire Missouri uses should last indefinitely.³³

24. Spire Missouri's work order authorization sheets did not explain if a main or service line being replaced was worn out or deteriorated.³⁴

25. Spire Missouri did not provide sufficient information for Staff to determine whether any plastic pipe being replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.³⁵

26. Spire Missouri has not attempted to calculate the amount of plastic pipe replaced that was worn out or in a deteriorated condition.³⁶

27. Spire Missouri presented an analysis of ten work orders purporting to show that in nine of those work orders the company reduced, rather than increased, its replacement costs by retiring plastic facilities where it was not operationally or economically feasible to reuse them.³⁷

III. Conclusions of Law and Discussion

Spire Missouri is a "gas corporation" and "public utility" as those terms are defined by Section 386.020, RSMo 2016.³⁸ Spire Missouri is subject to the Commission's jurisdiction, supervision, control, and regulation as provided in Chapters 386 and 393, RSMo. The Commission has the authority under Sections 393.1009 through 393.1015, RSMo, to consider and approve ISRS requests such as the one proposed in the Petitions. Since

³² Tr. Vol. 3, p. 369.

³³ Tr. Vol. 3, p. 375.

³⁴ Tr. Vol. 3, p. 449.

³⁵ Tr. Vol. 3, p. 466.

³⁶ Tr. Vol. 3, p. 483.

³⁷ Ex. 3, Hoferlin Direct, p. 3-5, Schedule CRH-D1.

³⁸ Unless otherwise stated, all statutory citations are to the Revised Statutes of Missouri, as codified in the year 2016.

Spire Missouri brought the Petitions, it bears the burden of proof.³⁹ The burden of proof is the preponderance of the evidence standard.⁴⁰ In order to meet this standard, Spire Missouri must convince the Commission it is “more likely than not” that its allegations are true.⁴¹ Section 393.1015.2(4), RSMo, states that “[i]f the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, the commission shall enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1009 to 393.1015”.

The issues for determination in this remand proceeding are 1) what costs, if any, were recovered through Spire Missouri East and West’s 2016 ISRS for the replacement of ineligible plastic components not in a worn out or in a deteriorated condition, and 2) whether Spire Missouri should be required to refund any of those costs?

Ineligible expenses

Section 393.1012.1, RSMo, provides that a gas corporation may petition the Commission to change its ISRS rate schedule to recover costs for “eligible infrastructure system replacements”, which is defined in Section 393.1009(3), RSMo.⁴² In order to be

³⁹ “The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue”. *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

⁴⁰ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996).

⁴¹ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109 -111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

⁴² “Eligible infrastructure system replacements”, gas utility plant projects that:

- (a) Do not increase revenues by directly connecting the infrastructure replacement to new customers;
- (b) Are in service and used and useful;
- (c) Were not included in the gas corporation's rate base in its most recent general rate case; and
- (d) Replace or extend the useful life of an existing infrastructure.

eligible, the project must meet the definition of a “gas utility plant project” in Section 393.1009(5), RSMo.⁴³

The issue presented in these cases is whether certain plastic main and service line replacements installed by Spire Missouri are eligible for ISRS recovery. Spire Missouri’s position is that it should be able to collect all of the ISRS charges it requested in the Petitions, since all the projects and work orders included are ISRS-eligible. Staff and OPC recommend that the Commission issue an order that excludes all plastic pipe replacements from the amounts Spire Missouri is permitted to recover, although they differ somewhat on the method for calculating those ineligible expenses.

In its review of the Commission’s previous Report and Order, the Missouri Western District Court of Appeals stated that Section 393.1009(5)(a) “sets forth two requirements for component replacements to be eligible for cost recovery under ISRS: (1) the replaced components must be installed to comply with state or federal safety requirements and (2) the existing facilities being replaced must be worn out or in a deteriorated condition.”⁴⁴ The Court found that there was no evidence of a state or federal safety requirement that mandated the replacement of plastic mains and service lines, and that Spire Missouri’s “plastic mains and service lines were not in a worn out or deteriorated condition”.⁴⁵ The

⁴³ “Gas utility plant projects” may consist only of the following:

- (a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition;
- (b) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and
- (c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the gas corporation.

⁴⁴ *Matter of Application of Laclede Gas Co. to Change Its Infrastructure Sys. Replacement Surcharge in Its Missouri Gas Energy Serv. Territory v. Office of Pub. Counsel*, 539 S.W.3d 835, 839 (Mo. Ct. App. 2017), *reh’g and/or transfer denied* (Dec. 14, 2017), *transfer denied* (Mar. 6, 2018)

⁴⁵ *Id.* at p. 839-840.

Court concluded “that recovery of the costs for replacement of plastic components that are not worn out or in a deteriorated condition is not available under ISRS”, so the Commission’s Report and Order was reversed and “remanded for further proceedings consistent with this opinion”.⁴⁶

After conducting a hearing on remand to take further evidence, that evidence showed that Spire Missouri’s plastic pipe replacements were not worn out or deteriorated. The polyethylene plastic pipe that Spire Missouri uses should last indefinitely, but Spire Missouri did not conduct a review to determine if that plastic pipe was worn out or deteriorated before replacing it. Spire Missouri’s work order authorization sheets did not explain if a main or service line being replaced was worn out or deteriorated, and the company made no attempt to calculate the amount of plastic pipe replaced that was worn out or in a deteriorated condition. In addition, Spire Missouri did not provide sufficient information to determine whether any plastic pipe being replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.

Spire Missouri argues that no adjustment to the company’s ISRS charges should be made in connection with plastic pipe replacements because those replacements resulted in no incremental increase in ISRS costs, but instead decreased them. Thus, there are no ineligible costs to exclude. In support of this argument, Spire Missouri presented an analysis of ten work orders purporting to show that in nine of those work orders the company reduced, rather than increased, its replacement costs by retiring plastic facilities where it was not operationally or economically feasible to reuse them. Spire Missouri asks the Commission to extrapolate from those nine work orders and reach a similar result in the

⁴⁶ *Id.* at p. 841.

hundreds of work orders that Spire Missouri did not analyze. However, Spire Missouri's analysis is based on far too few work orders for such a conclusion to be reasonable. Spire also argues that no adjustment to its ISRS revenues or costs is appropriate under ratemaking and cost allocation principles. This argument improperly intermixes the issue of prudence, which is determined in a general rate proceeding, with eligibility, which is the appropriate determination in an ISRS proceeding. So, Spire Missouri's arguments regarding prudence, cost avoidance, and economic efficiency are irrelevant to the Commission's conclusion in these cases.

In the future, if Spire Missouri wishes to renew its argument that plastic pipe replacements result in no cost or a decreased cost of ISRS, it should submit supporting evidence to be considered, such as, but not limited to, a separate cost analysis for each project claimed, evidence that each patch was worn out or deteriorated, or evidence regarding the argument that any plastic pipe replaced was incidental to and required to be replaced in conjunction with the replacement of other worn out or deteriorated components.

Here, Staff provided the best evidence of a methodology to calculate the costs of those ineligible plastic pipe replacements. Staff reviewed all of the work order authorizations provided by the company to determine the feet of main and service lines replaced and retired by the type of pipe, and then applied the actual individual plastic main and services line percentages to the work order cost to determine the value of the replacement of plastic pipe for the work order.

Based on Staff's adjustments to exclude the ineligible costs related to plastic pipe replacements, Spire Missouri collected ineligible replacement costs through its ISRS in the amounts of \$827,159 for Spire Missouri West and \$2,283,628 for Spire Missouri East.

Refunds

In general, the Commission does not have the authority to issue an order requiring a pecuniary reparation or refund.⁴⁷ The Commission lacks authority to retroactively correct rates or take into account overpayments when fashioning prospective rates.⁴⁸ If the Commission were to determine that a refund of ISRS costs is appropriate, it would need specific statutory authority to order those refunds. Two potential sources of authority for refunds of ISRS revenues are the ISRS statutes relating to gas utilities, Sections 393.1009-393.1015, and the general statute regarding temporary rate adjustments following the appeal of a Commission order establishing new rates or charges, Section 386.520.2.

In the ISRS statutes, refunds are authorized in two provisions of Section 393.1015.⁴⁹ Subsection 5 of that statute allows annual adjustments of ISRS charges after a reconciliation process to recover or refund the difference between ISRS revenues actually collected and appropriate ISRS revenues as ordered by the Commission. Subsection 8 permits the Commission to offset a utility's future ISRS revenues to account for any eligible ISRS costs previously included in an ISRS that were disallowed during a general rate proceeding. None of these situations are similar to the current situation, where the Commission is being asked to determine if ISRS costs should be classified as ineligible after those costs were already considered in a general rate case and found to be prudent. Section 393.1015 does not provide a specific legal basis for refunds in the cases now before the Commission.

In addition, the ISRS statutes do not allow superseded ISRS tariffs to be corrected retroactively after a general rate case includes those infrastructure costs in base rates. In a

⁴⁷ *DeMaranville v. Fee Fee Trunk Sewer, Inc.*, 573 S.W.2d 674, 676 (Mo. App. 1978); *State ex rel. & to Use of Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044 (Mo. 1943).

⁴⁸ *State ex rel. City of Joplin v. Pub. Serv. Comm'n of State of Mo.*, 186 S.W.3d 290, 297 (Mo. App. 2005).

⁴⁹ See also Section 393.1012.1, RSMo.

recent Missouri Supreme Court case involving Missouri-American Water Company⁵⁰, the court stated:

Under section 393.1000(3), when a utility company seeks to recover costs of an infrastructure system replacement project by a surcharge, those costs cannot also be recovered as part of the company's general base rate. After the company has its next general rate case, however, those costs must be incorporated in the utility's base rate and can no longer provide the basis for a surcharge. § 393.1006.6(1). The surcharge then must be reset to zero.

That is what has occurred here. After the surcharge that is the subject of this proceeding was approved, and while that approval was on appeal, MAWC filed for and was granted a general base rate increase that included the infrastructure costs that had been the subject of the surcharge at issue here. At that point, the amounts that were previously part of the disputed surcharges were included in the new base rate.

This appeal involves only Public Counsel's challenge to the surcharge. Because the costs that formed the basis of the disputed surcharge have been incorporated into MAWC's base rate, the base rate supersedes the surcharge. The surcharge has been reset to zero, and superseded tariffs cannot be corrected retroactively.⁵¹ (emphasis added)

Applying the reasoning of the Court to the cases now before the Commission, the Spire ISRS tariffs that the Commission previously approved were no longer effective when those ISRS costs were incorporated into base rates and reset to zero during Spire's most recent general rate case pursuant to Section 393.1015.6(1). The tariffs approved as part of that general rate case are now effective and supersede the ISRS surcharge from those previous ISRS cases. Even where the Commission now determines that some of those prior costs were improperly classified as ISRS-eligible, after a general rate case the Commission cannot correct those previous tariffs retroactively by applying a refund prospectively in future ISRS cases.⁵²

⁵⁰ The statutes governing ISRS for water utilities, Sections 393.1000-393.1006, are substantially similar to the ISRS statutes for gas utilities for purposes of the issue being discussed here.

⁵¹ *Matter of Missouri-Am. Water Co.*, 516 S.W.3d 823, 828 (Mo. 2017), *transfer denied* (May 30, 2017), *reh'g denied* (May 30, 2017).

⁵² This determination should not be considered as a restriction to the normal reconciliation process required in Section 393.1015, subsections 5 and 6.

Section 386.520, RSMo, does not provide an independent legal basis for ordering a refund of any ISRS surcharges in these cases. Subsection 2(2) of that statute says that in the event a court determines that a Commission order was improperly decided on an issue affecting rates, then the Commission “shall be instructed on remand to approve temporary rate adjustments” to return to customers any excess amounts that had been collected by the utility, plus interest. However, the opinion of the Court of Appeals did not include such a specific instruction, even though OPC had requested such an instruction three times in its briefs before the Court. Since the Court of Appeals did not include that instruction in its opinion, it did not invoke the statutory provisions of Section 386.520 to grant the Commission the authority to order such a refund.

The Commission concludes that it does not have the statutory authority to order a refund of any ineligible costs for plastic pipe replacements from Spire Missouri’s previous ISRS cases.

IV. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law to reach its conclusions, the Commission concludes that the substantial and competent evidence in the record supports the conclusion that Spire Missouri has not met, by a preponderance of the evidence, its burden of proof to demonstrate that the portion of work orders described in the Petitions and supporting documentation relating to the replacement of plastic pipe components comply with the requirements of Sections 393.1009 to 393.1015, RSMo. Although those plastic pipe replacement costs are ineligible for ISRS cost recovery, the Commission also concludes it does not have the statutory authority to order a refund of those costs.

Since the Commission is issuing orders in related Spire Missouri ISRS cases concurrently with these cases, the Commission will, consistent with those other orders, make this order effective on October 1, 2018.

THE COMMISSION ORDERS THAT:

1. In compliance with the opinion of the Missouri Western District Court Appeals, the Commission has determined that Spire Missouri, Inc.'s Petitions in these cases included ineligible costs related to the replacement of plastic pipe components, and that the Commission lacks statutory authority to refund those ineligible costs. As a result of its conclusions in these cases, the Commission will take no further action.

2. This order shall become effective on October 1, 2018.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Hall, and
Coleman, CC., concur.
Rupp, C., dissents.

Bushmann, Senior Regulatory Law Judge

**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 Surcharge in its Missouri Gas)
Energy Service Territory)

File No. GO-2016-0332
Tariff No. YG-2017-0048

In the Matter of the Application of Laclede Gas)
Company to Change its Infrastructure System)
Replacement Surcharge in its Laclede Gas)
Service Territory)

File No. GO-2016-0333
Tariff No. YG-2017-0047

REPORT AND ORDER

Issue Date: January 18, 2017

Effective Date: January 28, 2017

**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) **File No. GO-2016-0332**
Replacement Surcharge in its Missouri Gas) Tariff No. YG-2017-0048
Energy Service Territory)

In the Matter of the Application of Laclede Gas)
Company to Change its Infrastructure System) **File No. GO-2016-0333**
Replacement Surcharge in its Laclede Gas) Tariff No. YG-2017-0047
Service Territory)

APPEARANCES

Appearing for **LACLEDE GAS COMPANY AND MISSOURI GAS ENERGY:**

Michael C. Pendergast and **Rick Zucker**, Laclede Gas Company, 700 Market Street, 6th Floor, St. Louis, Missouri 63101.

Appearing for **OFFICE OF THE PUBLIC COUNSEL:**

Marc D. Poston, Deputy Public Counsel, Post Office Box 2230, 200 Madison Street, Suite 650, Jefferson City, Missouri 65102-2230.

Appearing for the **STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION:**

Kevin A. Thompson, Chief Staff Counsel, and **Marcella Forck**, Legal Counsel, Post Office Box 360, Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65102.

REGULATORY LAW JUDGE: Nancy Dippell

REPORT AND ORDER

I. Procedural History

On September 30, 2016, Laclede Gas Company filed applications and petitions to change its infrastructure system replacement surcharges (ISRS) in its Missouri Gas Energy (MGE) and Laclede Gas Service (Laclede) territories.¹ MGE requested an adjustment to its ISRS rate schedule to recover costs incurred in connection with eligible infrastructure system replacements made during the period March 1, 2016, through August 31, 2016, with pro forma ISRS costs updated through October 31, 2016. Laclede also requested an adjustment to its ISRS rate schedule to recover costs incurred in connection with eligible infrastructure system replacements made during the period March 1, 2016, through August 31, 2016, with pro forma ISRS costs updated through October 31, 2016. Laclede Gas Company provided Staff and Public Counsel updated actual cost information for the pro forma figures throughout Staff's audit on various dates from October 10 through November 21, 2016.

The Commission issued notice of the applications and provided an opportunity for interested persons to intervene, but no intervention requests were submitted in either case. The Commission also suspended the filed tariff sheets until January 28, 2017.

On November 29, 2016, the Staff of the Missouri Public Service Commission (Staff) filed its report recommending a \$72 correction to MGE's proposal due to a journal entry error and a \$7,489 correction to Laclede's proposal due to a difference in

¹ Laclede Exhibit 5, *Verified Application and Petition of Missouri Gas Energy, an Operating Unit of Laclede Gas Company, to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory*, filed Sept. 30, 2016, File No. GO-2016-0332; and Laclede Exhibit 4, *Verified Application and Petition of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede Gas Service Territory*, filed Sept. 30, 2016, File No. GO-2016-0333. (While these cases were not consolidated, they were heard simultaneously, and this Report & Order addresses both applications.)

the time periods recorded for accumulated depreciation and deferred taxes.² Staff recommended that the Commission reject the original tariff sheets and approve ISRS adjustments for MGE and Laclede based on Staff's determination of the appropriate amount of ISRS revenues.

On December 9, 2016, Laclede Gas Company filed a response accepting Staff's recommendation and attaching specimen tariffs. Also on December 9, 2016, the Office of the Public Counsel (Public Counsel or OPC) filed a motion in each case requesting that the Commission reject the proposed ISRS increase or, alternatively, schedule an evidentiary hearing.³ A joint procedural schedule was set and written testimony was filed.

On December 19, 2016, Laclede Gas Company filed its *Response of Laclede Gas Company in Opposition to OPC's December 9 Motion, or in the Alternative, Motion to Strike Certain Issues* (December 19 Motion). Responses to the December 19 Motion were received and oral arguments were heard prior to the joint evidentiary hearing in these cases on January 3, 2017.

The parties also filed an issues list and statements of position prior to the hearing. The issues list contained five issues including Laclede Gas Company's motion to dismiss. On January 2, 2017, Public Counsel dismissed two of the five issues.

Post-hearing briefs were filed on January 6, 2017. On January 10, 2017, Public Counsel filed a *Motion to Strike Portions of Laclede's Brief or, in the Alternate, Allow OPC to Respond*. On January 16, 2017, Laclede and MGE filed *Laclede and MGE's*

² *Staff Recommendation*, filed Nov. 29, 2016, File No. GO-2016-0332; and *Staff Recommendation*, filed Nov. 29, 2016, File No. GO-2016-0333.

³ *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing*, File Nos. GO-2016-0332 and GO-2016-0333 (filed Dec. 9, 2016).

Motion to Strike and Response to OPC's Motion to Strike. In response, Public Counsel filed the *OPC Response Regarding Motions to Strike* on January 17, 2017.

II. Outstanding Motions

Public Counsel's Motion to Strike

Public Counsel filed a motion to strike portions of Laclede's brief containing citations and excerpts of arguments during other Commission cases on appeal to the Western District Court of Appeals and the Missouri Supreme Court. Public Counsel is correct that these arguments were not specifically included in the evidence of record. Allegations were raised, however, regarding inconsistency with past positions. In fact, the record is replete with discussion of reversal of position by witnesses, individually, and the parties. Additionally, the record on appeal that Laclede references is in the Commission's Electronic and Information Filing System (EFIS) and the Commission could have taken administrative notice of those records. However, the Commission does not find these arguments to be relevant to this decision and did not rely on them in making this determination. Therefore, no prejudice resulted from these arguments and the Commission will deny Public Counsel's motion to strike as moot. Public Counsel's alternative request, to be allowed to respond, will be granted and has been accomplished with Public Counsel's motion to strike.

Laclede's Motion to Strike

With regard to Laclede's motion to strike filed on January 16, 2017, the Commission disagrees with Laclede that "the matter of capitalization versus expense should be stricken from the parties' briefs." The testimony of Mr. Hyneman that Laclede

cites as being particularly offensive was given without objection, so the issue has been raised and is appropriate for briefing. Therefore, Laclede's motion to strike is denied.

Laclede's Motion to Dismiss

On December 19, 2016, Laclede Gas Company filed its pleading asking the Commission to dismiss this action and effectively deny Public Counsel's request for a hearing for several reasons. Laclede Gas Company asked that, alternatively, the issues of updating and incentive compensation be stricken. Public Counsel later dismissed the updating and incentive compensation issues, so that request is moot.

First, Laclede Gas Company argues that Public Counsel was in defiance of the Commission's November 30, 2016, procedural order by raising new issues on the 70th day after the petitions had been filed, which was December 9, 2016. A review of that procedural order shows that the Commission did not direct Public Counsel to file a response to Staff's Recommendation. Rather the Commission ordered that, "Any other party wishing to respond or object to Staff's recommendation shall do so no later than December 9, 2016."⁴ The Commission set no deadline for the filing of objections to the tariff sheets or requests for hearing. Thus, Public Counsel was in compliance with the Commission's procedural order.

Second, Laclede Gas Company argued that Public Counsel should have raised these new issues within the 60-day statutory deadline that Staff is required to follow.⁵ Even though the statute does not set out deadlines for Public Counsel, or any other party or entity other than Staff and the Commission, the statute clearly contemplates

⁴ *Order Establishing Time to Respond to Staff's Recommendation*, File Nos. GO-2016-0332 and GO-2016-0333 (issued Nov. 30, 2016).

⁵ Section 393.1015.2.(1), RSMo (Supp. 2012).

that Public Counsel will be involved in ISRS proceedings since it is required to receive notice of the filings when they are made.⁶ Also, pursuant to Commission Rule 4 CSR 240-2.010(10), absent a filed notice of intent not to participate, Public Counsel is automatically a party to any case before the Commission. If the legislature had intended to mandate a deadline for the Public Counsel's filings, it would have done so in the statute.

Further, although the Commission must complete its order within 120 days of the petition being filed, it is within the Commission's discretion as to whether it holds a hearing in ISRS petitions.⁷ In the current case, the Commission received Public Counsel's objections and determined that there was sufficient time to hold a hearing. A procedural schedule was set and the parties had an opportunity to conduct discovery, file written direct and rebuttal testimony, file an issues list and position statements, have a full opportunity for cross-examination at the evidentiary hearing, and file briefs. Thus, even though the procedural schedule was abbreviated and accommodations had to be made due to holidays, a full hearing was held and due process was served. Therefore, the Commission denies Laclede Gas Company's December 19 motion.

III. Findings of Fact

Any finding of fact for which it appears that the Commission has made a determination between conflicting evidence is indicative that the Commission attributed greater weight to that evidence and found the source of that evidence more credible and more persuasive than that of the conflicting evidence.

⁶ Section 393.1015.1.(1), RSMo (Supp. 2012).

⁷ Section 393.1015.2.(3), RSMo (Supp. 2012). ("The commission *may* hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred twenty days after the petition is filed." (Emphasis added)).

1. Laclede is a public utility and gas corporation incorporated under the laws of the state of Missouri. Laclede distributes and transports natural gas to customers in the City of St. Louis and the counties of St. Louis, St. Charles, Crawford, Jefferson, Franklin, Iron, St. Genevieve, St. Francois, Madison, and Butler.⁸

2. MGE is an operating unit of Laclede Gas Company that conducts business in Laclede Gas Company's MGE service territory under the fictitious name of Missouri Gas Energy. MGE is engaged in the business of distributing and transporting natural gas to approximately 500,000 customers in the western Missouri counties of: Andrew, Barry, Barton, Bates, Buchanan, Carroll, Cass, Cedar, Christian, Clay, Clinton, Cooper, Dade, DeKalb, Greene, Henry, Howard, Jackson, Jasper, Johnson, Lafayette, Lawrence, McDonald, Moniteau, Newton, Pettis, Platte, Ray, Saline, Stone, and Vernon.⁹

3. An ISRS is a statutorily authorized rate adjustment mechanism tool utilized by eligible gas corporations to recover the cost of certain infrastructure replacements by establishing and updating a surcharge on a customer's bill.¹⁰ A qualifying gas corporation files an ISRS petition with the Commission seeking authority to recover the depreciation expense and return associated with eligible net plant additions, as well as amounts associated with property taxes for those additions.¹¹

4. Once an ISRS is established, a gas corporation can submit to the Commission a proposed rate schedule changing the ISRS to recover the expense of infrastructure system replacements outside of a formal rate case. The cumulative

⁸ Laclede Exhibit 4; p. 2, ¶ 3-4.

⁹ Laclede Exhibit 5; p. 2, ¶ 4-5.

¹⁰ Staff Exhibit 6, *Rebuttal Testimony of Mark Oligschlaeger*, p. 3, Ins. 7-12.

¹¹ Staff Exhibit 6, p. 3, Ins. 13-15.

revenue requirement for all Commission-approved ISRS updates is then placed on customers' bills before being zeroed out at the next general rate case.

5. Staff performs an ISRS audit when a petition to change an ISRS is filed.¹² By statute, Staff may file a report of its audit within 60 days from the time an ISRS petition is filed.¹³

6. In contrast to the type of audit performed in a general rate case, an ISRS audit is limited in scope to a determination of whether the included projects are ISRS-eligible and whether the calculations were done correctly. While costs of an ISRS project may be included in rates, those costs are still subject to a prudence review in a subsequent rate case. If the costs are found to be imprudent, the amount of ISRS funds collected for the project can be refunded to customers.¹⁴

A. Laclede

7. The Commission approved Laclede's ISRS to go into effect on April 12, 2014, in File No. GO-2014-0212. Laclede's most recent general rate increase was approved by the Commission in File No. GR-2013-0171. Laclede has routinely sought approval to revise its ISRS to include the costs of additional infrastructure system replacements since its last general rate case. The Commission has approved five petitions to change Laclede's ISRS, with the last order approving a change to the ISRS being in File No. GO-2016-0196.¹⁵ The cumulative Commission-approved ISRS amounts are included in Laclede's current ISRS rates.¹⁶

¹² Staff Exhibit 3, *Direct Testimony of David Sommerer*, Schedule DMS-d2.

¹³ Section 393.1015.2(2), RSMo (Supp. 2012).

¹⁴ Sections 393.1009 and 393.1015, RSMo (Supp. 2012).

¹⁵ Staff Exhibit 2, *Direct Testimony of Jennifer K. Grisham*, Schedule JKG-d1, p. 4.

¹⁶ Staff Exhibit 2, Schedule JKG-d1, pp. 4-5.

8. On September 30, 2016, Laclede filed a petition seeking to recover costs for claimed ISRS eligible projects from March 1, 2016 updated through October 31, 2016.¹⁷

9. Laclede attached to its petition supporting documentation for the plant additions completed since the last approved ISRS change.¹⁸ This included documentation identifying the type of addition, utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense.¹⁹ The company also provided estimates of capital expenditures for projects completed through October 2016.²⁰

10. Laclede provided Staff and Public Counsel updated actual cost information for the pro forma figures on October 19 and November 1, 16, 17, and 21, 2016.²¹

11. As part of its audit, Staff reviewed workpapers, a representative sample of work orders, invoices, and other applicable documentation.²² Staff concluded that each of the projects it reviewed met the ISRS rule qualifications.²³ Laclede provided all work order authorizations for work orders over \$50,000.²⁴

12. After performing its audit, Staff filed a recommendation that the Commission approve Laclede's petition for ISRS plant additions from March 1, 2016,

¹⁷ Staff Exhibit 2, Schedule JKG-d1, pp. 4-5; and Laclede Exhibit 4, p. 2.

¹⁸ Laclede Exhibit 4.

¹⁹ Laclede Exhibit 4, Appendix A and B.

²⁰ Laclede Exhibit 4.

²¹ Staff Exhibit 2, Schedule JKG-d1, p. 4.

²² Staff Exhibit 2, Schedule JKG-d1, p. 3.

²³ Staff Exhibit 2, Schedule JKG-d1, p. 3.

²⁴ Laclede Exhibit 2, *Rebuttal Testimony of Glenn W. Buck*, p. 10, Ins. 5-10.

through October 31, 2016.²⁵ Staff recommended the Commission approve the inclusion of accumulated depreciation and deferred taxes through December 15, 2016.²⁶

13. Based on its review and calculations, Staff recommended that Laclede receive an additional \$4,504,138 in ISRS revenues.²⁷ This was a different amount than the ISRS-related revenue increase Laclede requested due to Staff recording accumulated depreciation and deferred taxes through December 15, 2016, instead of December 1, 2016, as Laclede had done.²⁸

14. Staff's recommended cumulative amount to be included in ISRS rates was \$29,526,894.²⁹ Staff also submitted a proposed ISRS rate design, which is consistent with the methodology used to establish Laclede's past ISRS rates and is consistent with the method used to establish rates for other gas utilities.³⁰

15. Laclede concurred with and supported Staff's figures.³¹

16. No party disagreed, and the Commission finds, that all the utility plant additions submitted for ISRS classification were in service and used and useful before Staff filed its Recommendation on November 29, 2016.³²

17. Additionally, it is undisputed that all of Laclede's replaced cast iron mains were worn out or deteriorated due to their age.³³

²⁵ Laclede Exhibit 1, *Direct Testimony of Glenn W. Buck*, Schedule GWB-1; and Staff Exhibit 2, Schedule JKG-d1.

²⁶ Staff Exhibit 2, Schedule JKG-d1, p. 4.

²⁷ Staff Exhibit 2, Schedule JKG-d1, p. 4.

²⁸ Staff Exhibit 2, Schedule JKG-d1, p. 4.

²⁹ Staff Exhibit 2, Schedule JKG-d1, p. 5.

³⁰ Staff Exhibit 2, Schedule JKG-d1, pp. 5 and 8.

³¹ Laclede Exhibit 1, p. 3, Ins. 20-22.

³² Laclede Exhibit 2, p. 3, Ins. 6-13.

³³ Transcript p. 149, Ins. 15-18.

18. Public Counsel did object, however, to certain portions of plastic mains and service lines that were replaced, claiming that those were not worn out or deteriorated under the requirements of the ISRS statute.³⁴

19. Laclede determined it needed to replace, along with certain pieces of cast iron and bare steel pipe, the pieces of plastic pipe that had been used as patches to the cast iron pipe and to relocate the mains in easier to access areas.³⁵ The patches of plastic pipe varied from just a few feet to several hundred feet in length.³⁶

20. The plastic pipe that was replaced also varied in age, with some being installed in the 1970s, 1980s, 1990s, 2000s, and 2010s.³⁷

21. Laclede considered that the patches of plastic pipe and the plastic service lines were part of a larger system of pipeline and replaced entire neighborhoods of mains and service lines by running new plastic lines.³⁸ These lines were generally in new locations between the street and the sidewalks for easier access, were buried at a different depth, and required that service lines connect to the main line and enter the customers' buildings in different locations than the old lines.³⁹

22. Because of the scope of the projects, entire neighborhoods had mains and services lines replaced and relocated with the old pipes abandoned in place.⁴⁰ In this

³⁴ File No. GO-2016-0333, Item No. 7, *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing* (filed Dec. 9, 2016).

³⁵ Laclede Exhibit 2, p. 11, In. 20; and Laclede Exhibit 3, p. 10, Ins. 8-10.

³⁶ Laclede Exhibit 3, *Rebuttal Testimony of Mark D. Lauber*, p. 9, Ins. 17-18.

³⁷ OPC Exhibit 1, *Direct Testimony of Charles Hyneman*, Schedules CRH-D-2 and CRH-D-3; and OPC Exhibit 2.

³⁸ Tr. p. 128, Ins. 14-23; and p. 132, Ins. 12-22.

³⁹ Tr. pp. 140-142; and Laclede Exhibit 3, p. 10, Ins. 1-13.

⁴⁰ Laclede Exhibit 3, pp. 10-11.

particular situation, the mains could not be replaced without replacing the service lines.⁴¹

23. Additionally, replacing the plastic pipe was an essential and indispensable step in completing the cast iron and steel main replacement projects.⁴²

24. A majority of the pipeline replaced was cast iron and bare steel pipe.⁴³ Further, more cast iron and plastic in total was removed than new plastic put in place, due to efficiencies in the new placement and type of pipelines.⁴⁴

25. 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.⁴⁵

B. MGE

26. The Commission approved MGE's current ISRS to go into effect on October 8, 2014.⁴⁶ MGE's most recent general rate increase was approved by the Commission in File No. GR-2014-0007. Since then, MGE has routinely sought approval to revise its ISRS to include the costs of additional infrastructure system replacements. The Commission has approved three petitions to change MGE's ISRS since the last general rate case, with the latest order approving a change to the ISRS being in File No. GO-2016-0197.⁴⁷ The cumulative Commission-approved ISRS amounts are included in MGE's current ISRS rates.⁴⁸

⁴¹ Tr. p. 141, Ins. 12-14; and Laclede Exhibit 3, p. 11, Ins. 11-13.

⁴² Laclede Exhibit 3, p. 9, Ins. 8-10.

⁴³ Tr. p. 128, Ins. 6-9; and Staff Exhibit 5, *Rebuttal Testimony of Kimberly K. Bolin*, pp. 3-4.

⁴⁴ Laclede Exhibit 3, p. 8, Ins. 16-19; and p. 11, Ins. 17-19; and Staff Exhibit 5, p. 3, Ins. 11 and 21; and p. 7.

⁴⁵ Laclede Exhibit 2, p. 11, Ins. 3-14, and Revised Rebuttal Schedule GWB-2.

⁴⁶ The Commission approved Laclede's ISRS in File No. GR-2015-0025.

⁴⁷ Staff Exhibit 1, *Direct Testimony of Caroline Newkirk*, Schedule CNN-d1, p. 4.

⁴⁸ Staff Exhibit 1, Schedule CNN-d1, p. 4.

27. On September 30, 2016, MGE filed a petition seeking to recover costs for claimed ISRS eligible projects from March 1, 2016, updated through October 31, 2016.⁴⁹

28. MGE attached to its petition supporting documentation identifying the type of addition, the utility account, work order description, month of completion, addition amount, depreciation rate, accumulated depreciation, and depreciation expense.⁵⁰ MGE also provided estimates of capital expenditures for projects completed through October 2016.⁵¹

29. MGE provided Staff and Public Counsel updated actual cost information for the pro forma figures throughout the Staff audit process including on October 10 and November 10, 18, and 21, 2016.⁵²

30. As part of its audit, Staff reviewed workpapers, a representative sample of work orders, invoices, and other applicable documentation.⁵³ Staff concluded that each of the projects it reviewed met the ISRS rule qualifications.⁵⁴ MGE provided all work order authorizations for work orders over \$50,000.⁵⁵

31. After performing its audit, Staff filed a recommendation that the Commission approve MGE's petition for ISRS plant additions from March 1, 2016, through October 31, 2016.⁵⁶ Staff recommended the Commission approve the inclusion of accumulated depreciation and deferred taxes through December 15, 2016.⁵⁷

⁴⁹ Staff Exhibit 1, Schedule CNN-d1, pp. 4-5; and Laclede Exhibit 5, p. 2.

⁵⁰ Laclede Exhibit 5, Appendix A and B.

⁵¹ Laclede Exhibit 5.

⁵² Staff Exhibit 2, Schedule CNN-d1, p. 3.

⁵³ Staff Exhibit 1, Schedule CNN-d1, p. 3.

⁵⁴ Staff Exhibit 1, Schedule CNN-d1, p. 3.

⁵⁵ Laclede Exhibit 2, p. 10, Ins. 5-10.

⁵⁶ Laclede Exhibit 1, Schedule GWB-1; and Staff Exhibit 1, Schedule CNN-d1.

⁵⁷ Staff Exhibit 1, Schedule CNN-d1, p. 4.

32. Based on its review and calculations, Staff recommended that MGE receive an additional \$3,362,598 in ISRS revenues.⁵⁸ This figure includes the correction of a \$72 disposition error in MGE's workpapers.⁵⁹ Additionally, Staff recommended the ISRS-related revenue increase of MGE include accumulated depreciation and deferred taxes through December 15, 2016.⁶⁰

33. Staff's recommended cumulative amount to be included in ISRS rates is \$13,616,021.⁶¹ Staff also submitted a proposed rate schedule, which is consistent with the methodology used to establish MGE's past ISRS rates and is consistent with the method used to establish rates for other gas utilities.⁶²

34. MGE concurred with and supported Staff's figures.⁶³

35. No party disagreed, and the Commission finds, that all the utility plant additions submitted for ISRS classification were in service and used and useful before Staff filed its Recommendation on November 29, 2016.⁶⁴

36. Additionally, it is undisputed that all of MGE's replaced cast iron and bare steel mains were considered to be worn out or deteriorated due to their age.⁶⁵

37. Public Counsel did object, however, to certain portions of plastic mains and service lines that were replaced, claiming that those were not worn out or deteriorated under the requirements of the ISRS statute.⁶⁶ Additionally, Public Counsel

⁵⁸ Staff Exhibit 1, Schedule CNN-d1, p. 4.

⁵⁹ Staff Exhibit 1, Schedule CNN-d1, p. 4.

⁶⁰ Staff Exhibit 1, Schedule CNN-d1, p. 3.

⁶¹ Staff Exhibit 1, Schedule CNN-d1, p. 5.

⁶² Staff Exhibit 1, Schedule CNN-d1, p. 4.

⁶³ Laclede Exhibit 1, p. 3, Ins. 20-22.

⁶⁴ Laclede Exhibit 2, p. 3, Ins. 6-13.

⁶⁵ Tr. p. 149, Ins. 15-18.

⁶⁶ File No. GO-2016-0332, Item No. 8, *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing* (filed Dec. 9, 2016).

objected to certain hydrostatic testing costs as not eligible to be included in MGE's ISRS change request.⁶⁷

38. The company determined it needed to replace, along with certain pieces of cast iron and bare steel pipe, the pieces of plastic pipe that had been used as patches to the cast iron pipe and to relocate the mains in easier to access areas.⁶⁸ The patches of plastic pipe varied in length from just a few feet to several hundred feet in length.⁶⁹

39. The plastic pipe that was replaced also varied in age, with some being installed in the 1970s, 1980s, 1990s, 2000s, and 2010s.⁷⁰

40. MGE considered that the patches of plastic pipe and the plastic service lines were part of a larger system of pipeline and replaced entire neighborhoods of mains and service lines by running new plastic lines.⁷¹ These lines were generally in new locations between the street and the sidewalks for easier access, were buried at a different depth, and required that service lines connect to the main line and enter the customers' buildings in different locations than the old lines.⁷²

41. Because of the scope of the projects, entire neighborhoods had mains and services lines replaced and relocated with the old pipes abandoned in place.⁷³ In this particular situation the mains could not be replaced without replacing the service lines.⁷⁴

⁶⁷ File No. GO-2016-0332, Item No. 8, *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing* (filed Dec. 9, 2016).

⁶⁸ Laclede Exhibit 2, p. 11, Ins. 20; and Laclede Exhibit 3, p. 10, Ins. 8-10.

⁶⁹ Laclede Exhibit 3, p. 9, Ins. 17-18.

⁷⁰ OPC Exhibit 1, Schedules CRH-D-2 and CRH-D-3; and OPC Exhibit 2.

⁷¹ Tr. p. 128, Ins. 14-23; and p. 132, Ins. 12-22.

⁷² Tr. pp. 140-142; and Laclede Exhibit 3, p. 10, Ins. 1-13.

⁷³ Laclede Exhibit 3, pp. 10-11.

⁷⁴ Tr. p. 141, Ins. 12-14; and Laclede Exhibit 3, p. 11, Ins. 11-13.

42. Additionally, replacing the plastic pipe was an essential and indispensable step in completing the cast iron and steel main replacement projects.⁷⁵

43. A majority of the pipeline replaced was cast iron and bare steel pipe.⁷⁶ Further, more cast iron and plastic in total was removed than new plastic put in place, due to efficiencies in the new placement and type of pipelines.⁷⁷

44. By retiring the newer plastic patches, MGE reduces the depreciation expenses related to that plastic pipe and customers receive a reduction in ISRS rates accordingly.⁷⁸

45. Hydrostatic testing is performed for several reasons.⁷⁹

46. Hydrostatic testing is performed on newly installed pipelines to check for leaks.⁸⁰

47. Hydrostatic testing is also performed on old pipeline to check for leaks as part of the company's maintenance or integrity management program.⁸¹

48. The third type of hydrostatic testing is what is at issue in this case. That is, hydrostatic testing that is done on pipe that has already been placed in the ground (generally prior to 1970) and is being tested to establish a baseline maximum pressure.

49. This third type of testing is done only one time. If the testing shows leaking or deterioration the pipe is repaired or replaced (and the cost of testing and repair may or may not be eligible for inclusion in ISRS rates). If there is no problem,

⁷⁵ Laclede Exhibit 3, p. 9, Ins. 8-10.

⁷⁶ Tr. p. 128, Ins. 6-9; and Staff Exhibit 5, pp. 3-4.

⁷⁷ Laclede Exhibit 3, p. 8, Ins. 16-19; and p. 11, Ins. 17-19.

⁷⁸ Laclede Exhibit 2, p. 11, Ins. 3-14, and Revised Rebuttal Schedule GWB-2.

⁷⁹ Tr. p. 145, Ins. 11, through p.146, Ins. 23.

⁸⁰ Tr. p. 145, Ins. 11-14.

⁸¹ Tr. p. 145, Ins. 11-19.

nothing physical occurs. The testing determines the maximum allowable operating pressure and records are kept of that result.⁸²

50. The third type of testing provides confidence to the company that the pipeline is expected to last for an additional period of years. However, no physical changes have been made to the pipe in contrast to relining, insertion, or joint encapsulation projects.⁸³

IV. Conclusions of Law

Laclede and MGE are each a “gas corporation” and a “public utility” as those terms are defined by Section 386.020, RSMo (Supp. 2012). The Commission’s authority is limited to that specifically granted by statute or warranted by clear implication as necessary to effectively render a specifically granted power.⁸⁴ Laclede and MGE are subject to the Commission’s jurisdiction, supervision, control, and regulation, as provided in Chapters 386 and 393, RSMo.

Sections 393.1009 through 393.1015, RSMo (Supp. 2012) (“ISRS statutes”) authorize a gas corporation to establish or change an ISRS rate schedule outside of a general rate case after approval by the Commission. An ISRS is a statutorily permitted form of rate adjustment mechanism that allows a public utility to change rates based on the consideration of a single issue.⁸⁵ Thus, the Commission has the authority under the ISRS statutes to consider and approve ISRS requests such as the ones proposed in the petitions.⁸⁶

⁸² Laclede Exhibit 3, p.5, Ins. 18-21.

⁸³ Tr. p. 121, Ins. 21-22; and pp. 123-124.

⁸⁴ *State ex rel. Int’l Telecharge, Inc. v. Mo. Pub. Serv. Comm’n*, 806 S.W.2d 680, 686 (Mo. App. W.D. 1991).

⁸⁵ *Liberty Energy Corp. v. Office of Pub. Counsel*, 464 S.W.3d 520 (Mo. 2015).

⁸⁶ Laclede Exhibits 4 and 5.

Since Laclede and MGE brought the petitions, they bear the burden of proof.⁸⁷ The burden of proof is the preponderance of the evidence standard.⁸⁸ In order to meet this standard, Laclede and MGE must convince the Commission it is “more likely than not” that its allegations are true.⁸⁹ Section 393.1015.2(4), RSMo (Supp. 2012), states that “[i]f the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, the commission shall enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1009 to 393.1015.”

Eligible Expenses

The first issue for determination is whether the Commission should approve ISRS revenue requirement increases for Laclede and MGE in this case. Public Counsel argues that the Commission should reject the ISRS change petitions because they seek to recover ineligible expenses not authorized by law. These allegedly ineligible expenses were of two types: the replacement of plastic pipe mains and service lines that were relatively new; and hydrostatic testing of plastic pipe to establish a maximum allowable operating pressure (MAOP).⁹⁰

⁸⁷ “The burden of proof, meaning the obligation to establish the truth of the claim by preponderance of the evidence, rests throughout upon the party asserting the affirmative of the issue”. *Clapper v. Lakin*, 343 Mo. 710, 723, 123 S.W.2d 27, 33 (1938).

⁸⁸ *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007); *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 Mo. banc 1996).

⁸⁹ *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez*, 936 S.W.2d at 109-111; *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

⁹⁰ *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing*, File Nos. GO-2016-0332 and GO-2016-0333 (filed Dec. 9, 2016).

Section 393.1012.1, RSMo (Supp. 2012), provides that a gas corporation may petition the Commission to change its ISRS rate schedule “to provide for the recovery of costs for eligible infrastructure system replacements.”⁹¹ That term is defined in Section 393.1009(3), RSMo (Supp. 2012) as “gas utility plant projects that: (a) Do not increase revenues by directly connecting the infrastructure replacement to new customers; (b) Are in service and used and useful; (c) Were not included in the gas corporation's rate base in its most recent general rate case; and (d) Replace or extend the useful life of an existing infrastructure.”⁹²

Further, a “gas utility plant project” is defined in Section 393.1009(5), RSMo (Supp. 2012). That section states:

“Gas utility plant projects’ may consist only of the following:

(a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition;

(b) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and

(c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the gas corporation.⁹³

First, 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 “worn out or deteriorated.” To determine eligibility,

⁹¹ Emphasis added.

⁹² Emphasis added.

⁹³ Emphasis added.

the Commission must determine if the existing facilities were worn out or deteriorated.⁹⁴ No party disputed that the cast iron and bare steel pipes were considered worn out or deteriorated. The issue is whether certain costs associated with replacing connected plastic mains and service lines at the same time that cast iron and steel mains and service lines are replaced can be recovered through the ISRS.

Staff and Laclede Gas Company witnesses testified that the plastic mains being replaced were interspersed with the cast iron and steel pipe because they had been used to repair earlier problem areas.⁹⁵ Thus, when Laclede and MGE replace the deteriorated and worn out cast iron and steel, some plastic pipe is also incidentally replaced.⁹⁶ Additionally, because of the scope of the projects, entire neighborhoods had mains and services lines replaced and relocated with the old pipes abandoned in place.⁹⁷ The relocation of the mains further necessitated the replacement of the service lines. Even with all of this interrelated replacement, because of the new efficiencies achieved with the type of replacement pipe, the new locations, and abandoning the old pipe in place, more cast iron and plastic pipe in total was retired than new plastic pipe was installed.⁹⁸

The Commission concludes that because the plastic pipe in this case was an integral component of the worn out and deteriorated cast iron and steel pipe, as evidenced by the credible testimony of Staff and Laclede Gas Company witnesses, the cost of replacing it can be recovered.

⁹⁴ *Office of the Public Counsel v. P.S.C.*, 464 S.W.3d 520, 525 (Mo. 2015).

⁹⁵ Laclede Exhibit 3, p. 9, Ins. 10-13.

⁹⁶ Laclede Exhibit 3, p. 9, Ins. 5-7.

⁹⁷ Tr. p. 128, Ins. 14-23; and p. 132, Ins. 12-22; and Laclede Exhibit 3, pp. 10-11.

⁹⁸ Staff Exhibit 5, p. 3, Ins. 11 and 21; p. 7; and p. 9.

This decision can be distinguished from the Commission’s decision to not allow telemetry expenses as part of ISRS because those items were discrete additions to ISRS-eligible projects and were included in the pipeline replacement projects as a matter of convenience.⁹⁹ In contrast, the incidental replacement of plastic pipe connected to cast iron or steel, is not discrete and separate. These 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.¹⁰⁰ The plastic patches are no longer separate and discreet once integrated into the system. Thus, the Commission concludes that once installed, these patches become part of the “facility” that is being replaced.

Furthermore, 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.¹⁰¹ Such a disincentive would be particularly troubling in these circumstances as the more patches there are in a pipe, the more vulnerable that pipe is to leaks, which could cause a degradation of safety.¹⁰² Pragmatically, that result would be troubling, but it would also be contrary to the legislative purpose of the ISRS statutes. Therefore, the Commission concludes that 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.

⁹⁹ *In the matter of the Verified Application and Petition of Laclede Gas Company to Change Its Infrastructure System Replacement Surcharge in Its Laclede Gas Service Territory, and In the Matter of the Application of Laclede Gas Company to Change Its Infrastructure System Replacement Surcharge in Its Missouri Gas Energy Service Territory*, File Nos. GO-2015-0341 and GO-2015-0343, (Report & Order, issued Nov. 12, 2015).

¹⁰⁰ Staff Exhibit 5, pp. 5-6.

¹⁰¹ Staff Exhibit 5, p. 5, Ins.10-14.

¹⁰² Tr. p. 135, Ins. 9-23; and Tr. p. 136, ln. 22 through p. 138, ln. 14.

The hydrostatic testing at issue, however, is not an ISRS eligible expense. Pursuant to Section 393.1009(3), RSMo (Supp. 2012), the first criteria for ISRS eligibility is that it must be a gas utility plant project, the definition of which includes, “Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life. . .” of a pipe.¹⁰³ Laclede argues that hydrostatic testing extends the useful life of a pipe in that the testing provides confidence to the company that the pipeline is expected to last for an additional period of years. However, hydrostatic testing must first qualify as a project similar to main relining, service line insertion, or joint encapsulation before it matters whether useful life is extended.

The evidence shows that nothing physically is added to or taken away from the pipes that are tested.¹⁰⁴ If the testing shows no leaking or deterioration the maximum allowable operating pressure is determined, but nothing further occurs. The testing provides confidence to the company that the pipeline is expected to last for an additional period of years, but without first bearing some similarity to relining, insertion, or joint encapsulation projects, that extra confidence is irrelevant to ISRS eligibility.¹⁰⁵

Consistent with this conclusion, the Federal Energy Regulatory Commission (FERC) has determined that hydrostatic testing does not extend the useful life of a pipeline.¹⁰⁶ That determination was expressly for the purpose of expanding on accounting guidance that had been previously issued in an “accounting release.”¹⁰⁷

¹⁰³ Emphasis added.

¹⁰⁴ Tr. 123.

¹⁰⁵ Tr. 123-124.

¹⁰⁶ *Order on Accounting for Pipeline Assessment Costs*, FERC Docket No. AI05-1-000 (issued June 30, 2005) (FERC Order); OPC Exhibit 5.

¹⁰⁷ FERC Order, para. 1.

The FERC order specifically addresses the costs incurred when conducting baseline testing,¹⁰⁸ “The act of inspecting or assessing a pipeline segment does not by itself increase the useful life of a pipeline asset or improve its efficiency.”¹⁰⁹ While the Commission is not bound by the FERC decision, it is a helpful guide in the Commission’s analysis of this issue.

Laclede and MGE have not shown the pipe at issue will last any longer after testing than it would have lasted without. The only thing that has changed is that the company now has knowledge that it did not have previously. Even if the company had shown hydrostatic testing results in longer-lasting pipe, it has not shown that hydrostatic testing meets the definition of an ISRS-eligible project. The Commission concludes that this type of hydrostatic testing is not an ISRS-eligible expense.

V. Decision

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law, the Commission finds that the substantial and competent evidence in the record supports the conclusion that Laclede and MGE have met, by a preponderance of the evidence, their burden of proof to demonstrate that the petitions and supporting documentation comply with the requirements of Sections 393.1009 to 393.1015, RSMo (Supp. 2012) with the exception of the hydrostatic testing expense at issue. The Commission concludes that Laclede and MGE shall be permitted to change their ISRS rates to recover ISRS revenues equal to those set out by Staff in its Recommendations, less the hydrostatic testing expenses.

¹⁰⁸ FERC Order, para. 30.

¹⁰⁹ FERC Order, para. 21.

Further, these ISRS revenues shall follow the rate design for each customer class as set out in Appendix B of the Staff Recommendations.

Since the revenues and rates authorized in this order differ from those contained in the tariffs Laclede and MGE submitted with their petitions, the Commission will reject those tariff sheets. The Commission will allow Laclede and MGE an opportunity to submit new tariff sheets consistent with this order. Further, because Public Counsel's objections and request for hearing was not filed until the 70th day of this 120-day proceeding and due to the various state and federal holidays interfering with the hearing schedule, the Commission finds good cause to make this order effective in less than 30 days.¹¹⁰

THE COMMISSION ORDERS THAT:

1. The motions contained in the *Response of Laclede Gas Company in Opposition to OPC's December 9 Motion, or in the Alternative, Motion to Strike Certain Issues* is denied.
2. The January 10, 2017, motion to strike portions of Laclede's brief is denied and the alternate motion to allow OPC to respond is granted.
3. The January 16, 2017, *Laclede and MGE's Motion to Strike and Response to OPC's Motion to Strike* is denied.
4. The tariff sheet filed by Laclede Gas Company for its Laclede service territory on September 30, 2016, and assigned Tariff No. YG-2017-0047, is rejected.

¹¹⁰ In fact, even though the parties were fully aware of the time constraints on the Commission to issue its order within the 120-day statutory period, the parties originally agreed to a procedural schedule providing for a hearing on Jan. 10, 2017, with briefs not filed until Jan. 16, 2017 (the Martin Luther King, Jr. State Holiday). That schedule would have effectively given the Commission only 12 days to prepare this Report & Order, hold a properly noticed meeting to vote on the order, and issue it with a reasonable amount of time to allow for rehearing requests before it became effective.

5. Laclede Gas Company is authorized to adjust its Infrastructure System Replacement Surcharge for its Laclede service territory in an amount sufficient to recover ISRS revenue of \$4,504,138 for File No. GO-2016-0333.

6. Laclede Gas Company is authorized to file composite/cumulative ISRS rates for each customer class consistent with Staff's recommended rate design.

7. Laclede Gas Company shall file a tariff sheet in compliance with this order no later than 1:00 p.m., January 19, 2017.

8. Staff shall review the tariff sheet required by Ordered Paragraph 7 above after it is filed by Laclede Gas Company and file a recommendation as to whether the tariff sheet is in compliance with this order no later than 4:00 p.m., January 20, 2017.

9. Any party wishing to respond or comment on the tariff sheet required by Order Paragraph 7 above shall file its response no later than 4:00 p.m., January 20, 2017.

10. The tariff sheet filed by Missouri Gas Energy, an Operating Unit of Laclede Gas Company on September 30, 2016, and assigned Tariff No. YG-2017-0048, is rejected.

11. Missouri Gas Energy, an Operating Unit of Laclede Gas Company is authorized to adjust its Infrastructure System Replacement Surcharge sufficient to recover revenues of \$3,362,598 less the amount of the hydrostatic testing as set out in this order for File No. GO-2016-0332.

12. Missouri Gas Energy, an Operating Unit of Laclede Gas Company is authorized to file composite/cumulative ISRS rates for each customer class consistent with Staff's recommended rate design method.

13. Missouri Gas Energy, an Operating Unit of Laclede Gas Company shall file a tariff sheet in compliance with this order no later than 1:00 p.m., January 19, 2017.

14. Staff shall review the tariff sheet required by Ordered Paragraph 13 above once it is filed and file a recommendation as to whether the tariff sheet is in compliance with this order no later than 4:00 p.m., January 20, 2017.

15. Any party wishing to respond or comment on the tariff sheet required by Order Paragraph 13 above shall file its response no later than 4:00 p.m., January 20, 2017.

16. This order shall become effective on January 28, 2017.

BY THE COMMISSION



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, and Coleman, CC, concur,
Rupp, C., dissents,
and certify compliance with the provisions
of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 18th day of January, 2017.



**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

IN THE MATTER OF THE APPLICATION)
OF LACLEDE GAS COMPANY TO CHANGE)
ITS INFRASTRUCTURE SYSTEM)
REPLACEMENT SURCHARGE IN ITS)
MISSOURI GAS ENERGY SERVICE)
TERRITORY AND IN THE MATTER OF THE)
APPLICATION OF LACLEDE GAS COMPANY)
TO CHANGE ITS INFRASTRUCTURE)
SYSTEM REPLACEMENT SURCHARGE)
IN ITS LACLEDE GAS SERVICE TERRITORY;)
PUBLIC SERVICE COMMISSION,)
)
Respondent,)
)
v.)
)
THE OFFICE OF PUBLIC COUNSEL,)
)
Appellant.)

WD80544

Opinion filed: November 21, 2017

APPEAL FROM THE PUBLIC SERVICE COMMISSION

Before Division Four: Mark D. Pfeiffer, Chief Judge, Gary D. Witt, Judge and
Edward R. Ardini, Jr., Judge

The Office of the Public Counsel (“OPC”) appeals from an order entered by the Missouri Public Service Commission (“Commission”) granting Laclede Gas Company’s (“Laclede”) requests for increases to the Infrastructure System Replacement Surcharges (“ISRS”) for its Laclede Gas and Missouri Gas Energy (“MGE”) service territories. We reverse the Commission’s

order to the extent that it allowed cost recovery through adjustment to the ISRS rate schedules for the replacement of plastic components that were not in a worn out or deteriorated condition, and the case is remanded.

FACTUAL AND PROCEDURAL HISTORY

The Commission is a state administrative agency that regulates public utilities. §§ 386.040; 386.250.¹ The Commission's Staff acts separately and is a party to all cases before the Commission. *In re Laclede Gas Co.*, 504 S.W.3d 852, 856 (Mo. App. W.D. 2016). The OPC represents the public in all proceedings before the Commission and all appeals of Commission orders. § 386.710. Laclede is a "gas corporation" and "public utility" as defined in section 386.020 and is engaged in the business of distributing and transporting natural gas to customers within its Laclede Gas service territory in eastern Missouri as well as in MGE's service territory in western Missouri. Laclede is subject to the jurisdiction of the Commission as provided in Chapters 386 and 393.

This case arises from Laclede's current programs for replacing cast iron and unprotected steel gas mains and service lines. Beginning in 2011, Laclede abandoned a previous strategy of replacing only impaired gas mains and service lines and implemented a new approach focused on replacing entire neighborhood systems at one time, which in this case also involved moving its main lines to more convenient locations, changing system pressure, and moving or replacing service lines. On September 30, 2016, Laclede filed petitions with the Commission to recover costs associated with the replacement of these neighborhood systems through an increase to existing ISRS surcharges. The Commission Staff proposed particular adjustments, which were accepted by Laclede. Relevant to this appeal, the OPC objected to Laclede's effort to secure cost recovery

¹ All statutory citations are to the Revised Statutes of Missouri 2000 as currently supplemented.

through ISRS surcharges for costs associated with the replacement of plastic mains and service lines that were not in a worn out or deteriorated condition.

After holding an evidentiary hearing, the Commission issued its Report and Order, which concluded that “the plastic pipe in this case was an integral component of the worn out and deteriorated cast iron and steel pipe” and thus “the cost of replacing it can be recovered” through an increase to Laclede’s existing ISRS surcharges. The OPC appeals.

STANDARD OF REVIEW

The Commission’s Order will be affirmed if it is lawful and reasonable. *In re Liberty Energy (Midstates) Corp.*, 464 S.W.3d 520, 524 (Mo. banc 2015) (citations omitted). The Commission’s Order is lawful if it is authorized by statute, and our review of this issue is *de novo*. *Id.* (citations omitted). The Commission’s Order is reasonable if it “is supported by substantial, competent evidence on the whole record; the decision is not arbitrary or capricious; [and] where the [Commission] has not abused its discretion.” *Id.* (citations omitted). The party appealing bears the burden of proving that the Commission’s Order is unlawful or unreasonable. *Id.* (citations omitted).

DISCUSSION

Although single-issue ratemaking is generally prohibited, section 393.1012.1 authorizes a gas corporation to petition the Commission for an increase to its ISRS surcharge to recover the costs of “certain government-mandated infrastructure replacement projects outside a general ratemaking case.” *Laclede Gas Co. v. Office of the Pub. Counsel*, 523 S.W.3d 27, 30 (Mo. App. W.D. 2017) (citations omitted). “Pursuant to section 393.1009(3), ‘eligible infrastructure system replacements’ [under section 393.1012.1 include] ‘gas utility plant projects’ that meet certain specific criteria.” *Id.* (citation omitted). Eligible “gas utility plant projects” costs that may be

recovered through an ISRS surcharge include: “(1) those costs associated with replacements; (2) those costs associated with improvements and enhancements that defer replacements; and (3) those costs associated with government-mandated relocations.” *Id.*; § 393.1009(5).

Significant to this appeal, section 393.1009(5)(a) sets forth the ISRS-eligibility requirements for replacement projects. Under that provision, cost recovery through an ISRS surcharge is available for “[m]ains, valves, service lines, regulator stations, vaults, and other pipeline system components installed *to comply with state or federal safety requirements* as replacements for existing facilities that have *worn out* or are in *deteriorated condition*[.]” § 393.1009(5)(a) (emphasis added). The OPC argues that the replacement costs of the plastic mains and service lines are not ISRS-eligible under this section because those components were not worn out or deteriorated and, additionally, their replacement was not done to comply with a government-mandated safety requirement.

In response, Laclede and the Commission’s Staff argue that the plastic mains and service lines were previously installed as “patches” to temporarily extend the life of larger neighborhood cast iron and unprotected steel systems, which the Commission found were worn out or deteriorated due to their age.² They also assert that the new neighborhood systems are safer. Thus, they argue, costs associated with replacing the entire neighborhood systems should be eligible for recovery under ISRS. The Commission agreed, concluding in its Order that “the plastic pipe in this case was an integral component of the worn out and deteriorated cast iron and steel pipe” and thus “the cost of replacing it can be recovered” through an increase to the ISRS surcharges.

Although we will not substitute our judgment for the Commission’s “on issues within the realm of the agency’s expertise[.]” an action of the Commission must be authorized by statute and

² Although not stated in the Commission’s order, the replacement of certain cast iron and unprotected steel pipes is mandated by 4 C.S.R. 240-40.030(15).

we exercise “independent judgment regarding the Commission’s interpretation of a statute[.]” *Laclede Gas Co.*, 504 S.W.3d at 859 (citations omitted). “The primary rule of statutory interpretation is to effectuate legislative intent through reference to the plain and ordinary meaning of the statutory language. This Court must presume every word, sentence[,] or clause in a statute has effect, and the legislature did not insert superfluous language.” *Liberty Energy*, 464 S.W.3d at 524-25 (citations omitted). Section 393.1009(5)(a), *supra*, clearly sets forth two requirements for component replacements to be eligible for cost recovery under ISRS: (1) the replaced components must be installed to comply with state or federal safety requirements and (2) the existing facilities being replaced must be worn out or in a deteriorated condition.

No party contests that the plastic mains and service lines were not in a worn out or deteriorated condition,³ which “is a gradual process that happens over a period of time rather than an immediate event.” *Liberty Energy*, 464 S.W.3d at 525. This creates a challenge for Laclede because our Supreme Court has found this requirement to be mandatory and has interpreted it narrowly. *See id.* (holding that replacement of components damaged by a third party’s negligence is not encompassed by the statute). Laclede and the Commission’s Staff essentially argue that the specific condition of the replaced plastic components is not dispositive and that ISRS-eligibility should be determined based on the condition of the entire neighborhood system, and directs us to the Commission’s findings that the plastic pipes were installed as “patches” and constituted “an integral component of the worn out and deteriorated cast iron and steel pipe[.]”⁴ This effort to

³ There was testimony that the pipes were not reviewed to determine if they were worn out or deteriorated and that some of the plastic pipes were past their depreciable life. Laclede Gas depreciates plastic mains over seventy years and plastic service lines over forty-four years. MGE uses general rates (rather than distinguishing between plastic, cast iron, unprotected steel, etc.) and depreciates mains over fifty years and service lines over forty years. The plastic pipes in this case dated from as early as the 1970s and as late as 2016.

⁴ We question the characterization of the plastic pipes as “patches” given that some have been in place since as early as the 1970s and that Laclede did not adopt its strategy to replace entire neighborhood systems at one time until 2011. Additionally, the plastic main and service line replacements were not merely *de minimis* but “varied from just a few

assign ISRS eligibility to plastic pipes that are not worn out or deteriorated by evaluating an entire neighborhood system as a singular unit finds no support in the plain language of section 393.1009(5)(a).⁵

Additionally, the Commission's order does not identify a single "state or federal safety requirement" that mandated the replacement of the plastic mains and service lines or, for that matter, replacement of the neighborhood systems as a whole. The Commission's reasoning that patched lines are more "vulnerable . . . to leaks" and could result in "degradation of safety" is not a relevant consideration under section 393.1009(5)(a), which unambiguously requires that the replacement be done to "*comply* with state or federal safety requirements." Although Laclede has a cast iron main replacement program pursuant to 4 C.S.R. 240.040(15), no state or federal safety requirement has been cited mandating the manner and extent of the replacement strategy employed by Laclede.⁶ Replacement programs undertaken by a gas utility that incidentally improve safety, but are not grounded in a government-mandated requirement, fail to trigger cost recovery under ISRS. *Cf. Liberty Energy*, 464 S.W.3d at 525 (holding that costs for replacing lines damaged by a

feet to *several hundred feet in length*." (emphasis added). In fact, a sample of work orders provided by Laclede and analyzed by the parties revealed that 53,415 feet of main lines were retired, of which 8,817 feet were plastic (approximately 16 percent), and 53,279 feet of service lines were retired, of which 34,223 feet were plastic (approximately 64 percent).

⁵ We recognize that the replacement of worn out or deteriorated components will, at times, necessarily impact and require the replacement of nearby components that are not in a similar condition. Our conclusion here should not be construed to be a bar to ISRS eligibility for such replacement work that is truly incidental and specifically required to complete replacement of the worn out or deteriorated components. However, we do not believe that section 393.1009(5)(a) allows ISRS eligibility to be bootstrapped to components that are not worn out or deteriorated simply because that are interspersed within the same neighborhood system of such components being replaced or because a gas utility is using the need to replace worn out or deteriorated components as an opportunity to redesign a system (*i.e.*, by changing the depth of the components or system pressure) which necessitates the replacement of additional components.

⁶ Laclede testified that it adopted its new neighborhood replacement strategy in response to new requirements regarding system integrity under 4 C.S.R. 240-40.030(17), which requires gas companies to develop a written integrity management plan to identify threats to gas distribution systems. Other than this general assertion, however, Laclede did not testify that the regulation mandated it to replace entire neighborhood systems. In fact, after generally testifying that pipe joints or connections increase vulnerability and create a safety concern, Laclede admitted that their pipe joints were in compliance with all gas safety rules.

third party were not eligible for recovery under ISRS). While Laclede’s replacement strategy may laudably produce a safer system, the question squarely before us is not whether its chosen approach is prudent but rather whether the replacement of plastic components that were not in a worn out or deteriorated condition are ISRS-eligible. In analyzing that proposition, we cannot ignore the plain language of the statute for “convenience, expediency[,] or necessity” to conclude that the costs are eligible for recovery through the ISRS process. *Laclede Gas Co.*, 504 S.W.3d at 859 (“Neither convenience, expediency[,] or necessity are proper matters for consideration in the determination of whether or not an act of the commission is authorized by statute.” (citation omitted)); *see also Liberty Energy*, 464 S.W.3d at 525 (stating that the legislative intent is “demonstrated by the plain language of the statute”).

Finally, the Commission’s comment that “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” carries no weight and reflects a misapprehension of the breadth of ISRS-eligibility. The purpose of an ISRS surcharge is to allow a utility to “timely recover its costs for certain *government-mandated* infrastructure projects without the time and expense required to prepare and file a general rate case[.]” *In re Laclede Gas Co.*, 417 S.W.3d 815, 821 (Mo. App. W.D. 2014) (emphasis added). ISRS-eligibility under section 393.1009(5)(a) is dependent on a project being imposed on a gas utility by a government-mandated safety requirement, and it is the existence of that obligation that provides the only motivation or incentive relevant to our analysis.

Our conclusion that recovery of the costs for replacement of plastic components that are not worn out or in a deteriorated condition is not available under ISRS is based solely on our determination that those costs do not satisfy the requirements found in the plain language of section

393.1009(5)(a). Nothing in this opinion should be construed as expressing any view on the Commission's consideration of those costs in the context of a general ratemaking case.

CONCLUSION

We reverse the Commission's Report and Order as it relates to the inclusion of the replacement costs of the plastic components in the ISRS rate schedules, and the case is remanded for further proceedings consistent with this opinion.


EDWARD R. ARDINI, JR., JUDGE

All concur.

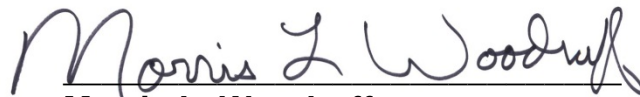
STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 20th day of September 2018.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

September 20, 2018

File/Case No. GO-2016-0332 and GO-2016-0333

**Missouri Public Service
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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.