



FILED

JAN 15 2016 4:30 pm

Missouri Public Service Commission

(Date File Stamp)

Missouri Public Service Commission

Judge or Division:	Appellate Number:	
Appellant: The Office of the Public Counsel	Missouri Public Service Commission File Number: GO-2015-0341 and GO-2015-0343	
vs.		
Respondent: The Missouri Public Service Commission		
<b>Notice of Appeal</b>		
Notice is given that The Office of the Public Counsel appeals to the Missouri Court of Appeals <input checked="" type="checkbox"/> Western <input type="checkbox"/> Eastern <input type="checkbox"/> Southern District.		
<u>01-15-2016</u> Date Notice of Appeal (to be filled in by Secretary of Commission)	 Filed Signature of Attorney or Appellant	
The notice of appeal shall include the appellant's application for rehearing, a copy of the reconciliation required by subsection 4 of section 386.420, a concise statement of the issues being appealed, a full and complete list of the parties to the commission proceeding, and any other information specified by the rules of the court. The appellant(s) must file the original and (2) two copies and pay the docket fee required by court rule to the Secretary of the Commission within the time specified by law. Please make checks or money orders payable to the Missouri Court of Appeals. At the same time, Appellant must serve a copy of the Notice of Appeal on attorneys of record of all parties other than appellant(s), and on all parties not represented by an attorney.		
<b>CASE INFORMATION</b>		
Appellant Attorney / Bar Number: Marc Poston Mo Bar #45722	Respondent's Attorney / Bar Number: Shelley Brueggemann, MO Bar #52173	
Address: 200 Madison Street, Suite 650 PO Box 2230 Jefferson City, MO 65102	Address: 200 Madison Street, Suite 800 PO Box 360 Jefferson City, MO 65102	
Telephone: 573-751-4857	Fax: 573-751-5562	Telephone: 573-751-7393
		Fax: 573-522-4016
Date of Commission Decision:  Issued 11/12/15 Effective 12/1/15	Date of Application for Rehearing Filed: 11/30/15	Date Application for Rehearing Ruled On:  12/16/15
<b>DIRECTIONS TO COMMISSION</b>		
A copy of the notice of appeal and the docket fee shall be mailed to the clerk of the appellate court. Unless otherwise ordered by the court of appeals, the commission shall, within thirty days of the filing of the notice of appeal, certify its record in the case to the court of appeals.		

**Certificate of Service**

I certify that on January 15, 2016, I served a copy of the notice of appeal on the following parties, at the following address(es), by the method of service indicated.

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Rick Zucker – U.S. Mail Service  
Laclede Gas Company  
700 Market Street, 6th Floor  
St. Louis MO 63101

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Jeffrey A. Keevil – Hand delivered  
Missouri Public Service Commission Staff  
P.O. Box 360  
Jefferson City, MO 65102

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Sherri Hall - U.S. Mail Service  
Emily Perez  
USW Local 11-7  
7730 Carondelet Ave., Ste 200  
St. Louis MO 63105

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Shelly Brueggemann - Hand delivered  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

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Appellant or Attorney for Appellant

**FORM 1. CIVIL CASE INFORMATION FORM SUPPLEMENT**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

No. WD \_\_\_\_\_

Public Counsel,

Petitioner/Appellant

Marc Poston, Bar Number 45722

P.O. Box 2230  
Jefferson City, MO 65102

vs.

Missouri Public Service Commission

Defendant/Respondent

Shelly Brueggemann, Bar Number 52173

P.O. Box 360  
Jefferson City, MO 65102

Date Notice filed with the Public Service Commission January 15, 2016

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The Record on Appeal will consist of a Legal File Only. (This will include records filed pursuant to Rules 81.13 and 81.16)

**FACTUAL BACKGROUND: (Events Giving Rise to Cause of Action)**

Judicial Review of the Missouri Public Service Commission's November 12, 2015 Report and Order issued in Case No. GO-2015-0341, *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 Case No. GO-2015-0343, *In the Matter of the Application of Laclede Gas Company to Change its Infrastructure System Replacement Surcharge in its Missouri Gas Energy Service Territory*.

**ISSUE:**

The Office of the Public Counsel (OPC) challenges the lawfulness and reasonableness of the Public Service Commission's findings and conclusions issued in its November 12, 2015 Report and Order.

## STATEMENT OF THE ISSUES

(As required by § 386.510 RSMo)

Appellant Public Counsel will raise the following issues on appeal:

1. The Office of the Public Counsel (OPC) challenges the lawfulness and reasonableness of the Public Service Commission's findings and conclusions issued in its November 12, 2015 Report and Order. Specifically, OPC raises the following issues:
  - The Order unlawfully and unreasonably authorized Laclede Gas Company and Missouri Gas Energy (MGE) to increase their respective Infrastructure System Replacement Surcharge (ISRS) in violation of Mo. Rev. Stat. §§ 393.1009(2)(b), 393.1012.1, 393.1015.1, and 393.1015.2 (Cum. Supp. 2013).
  - The Order unlawfully and unreasonably authorized Laclede and MGE to increase their respective ISRS without the supporting documentation required by Mo. Code Regs. Ann. tit. 4, § 240-3.265(20) (2011).
  - The Order unlawfully and unreasonably authorized Laclede and MGE to increase their respective ISRS without competent and substantial evidence.
  - The Order unlawfully and unreasonably violated Mo. Rev. Stat. § 386.710 (Cum. Supp. 2013), which establishes the Office of the Public Counsel's statutory right and obligation to represent ratepayers.
  - The Order unlawfully and unreasonably violated the Commission's prior order granting Laclede the authority to acquire MGE, which was conditioned upon the stipulated term that the transaction would have no detrimental effect on Laclede or MGE customers.

## LIST OF PARTIES TO THE COMMISSION PROCEEDING

(As required by § 386.510 RSMo)

The following parties participated in Public Service Commission Case Numbers GO-2015-0341 and GO-2015-0343:

<p><b>Laclede Gas Company:</b></p> <p>Rick Zucker, MBN 49211 700 Market Street, 6th Floor St. Louis MO 63101 Telephone: (314) 342-0533 Facsimile: (314) 421-1979 rick.zucker@thelacledegroupp.com</p> <p>Attorney for Laclede Gas Company and Missouri Gas Energy</p>	<p><b>Office of the Public Counsel:</b></p> <p>Marc D. Poston, MBN 45722 Chief Deputy Public Counsel P. O. Box 2230 Jefferson City MO 65102 Telephone: (573) 751-5558 Fax: (573) 751-5562 <a href="mailto:marc.poston@ded.mo.gov">marc.poston@ded.mo.gov</a></p> <p>Attorney for the Office of the Public Counsel</p>
<p><b>Public Service Commission Staff:</b></p> <p>Jeffrey A. Keevil, MBN 33825 Missouri Public Service Commission P.O. Box 360 Jefferson City, MO 65102 Telephone: (573) 526-4887 Fax: (573) 751-9285 <a href="mailto:jeff.keevil@psc.mo.gov">jeff.keevil@psc.mo.gov</a></p> <p>Attorney for the Staff of the Missouri Public Service Commission.</p>	<p><b>USW Local 11-6:</b></p> <p>Sherri Hall, MBN 40949 Emily Perez, MBN 62537 7730 Carondelet Ave., Ste 200 St. Louis MO 63105 Telephone: 314-727-1015 Fax: 314-727-6804 <a href="mailto:sahall@hammondshinners.com">sahall@hammondshinners.com</a></p> <p>Attorneys for USW Local 11-6</p>

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

In the Matter of the Verified Application )  
and Petition of Laclede Gas Company to ) Case No. GO-2015-0341  
Change its Infrastructure System )  
Replacement Surcharge in its Laclede Gas )  
Service Territory. )

In the Matter of the Application of )  
Laclede Gas Company to Change its ) Case No. GO-2015-0343  
Infrastructure System Replacement )  
Surcharge in its Missouri Gas Energy )  
Service Territory. )

**APPLICATION FOR REHEARING**

COMES NOW the Office of the Public Counsel ("Public Counsel") and in support of its Application for Rehearing of the Commission's November 12, 2015 Report and Order, states:

1. The Commission's Report and Order ("Order") resolved three issues regarding Laclede Gas Company's ("Laclede") and Missouri Gas Energy's ("MGE") petitions to increase surcharge rates through their respective Infrastructure System Replacement Surcharges (ISRS). Public Counsel seeks rehearing on one issue, which asked the Commission to determine whether it is lawful and reasonable for a gas company to "submit estimated budget ISRS investments in the petition that are later replaced with actual ISRS investments."

2. This case should be reheard because the Order unlawfully and unreasonably authorizes the Laclede and MGE ISRS's to include costs incurred for July and August 2015 that violated Mo. Rev. Stat. § 393.1015.1 (Cum. Supp. 2013), which states in relevant part:

393.1015. 1. (1) At the time that a gas corporation files a petition with the commission seeking to establish or change an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules, and its supporting documentation.

The Order violates this statute because the petitions it approves did not include supporting documentation regarding the calculation of the July and August 2015 infrastructure investment costs, and instead, included "placeholder" amounts for July and August, which could not be audited or verified because they were estimates and not actual costs. The Order unlawfully authorized the July and August costs to be recovered through the ISRS despite the fact that the costs were mostly incurred *after* the petitions were filed, and the actual costs approved by the Commission are *greater* than the original estimates provided in the petitions. Public Counsel seeks rehearing to enable the Commission to correct the error of allowing the ISRS rate increases to include July and August 2015 infrastructure costs that were not supported by the petitions.

3. This case should be reheard because the Order is unlawful and unreasonable in that it authorizes the Laclede and MGE ISRS's to include costs incurred for July and August 2015 that did not satisfy the requirements of Mo. Code Regs. Ann. tit. 4, § 240-3.265(20) (2011). This rule specifies what "supporting documentation" shall be filed with ISRS petitions, and states in part:

The subject utility's supporting documentation shall include workpapers showing the calculation of the proposed ISRS, and shall include, at a minimum, the following information...

(J) An explanation of when the infrastructure replacement projects associated with the ISRS were completed and became used and useful;

(K) For each project for which recovery is sought, the net original cost of the infrastructure system replacements (original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective ISRS), the amount of related ISRS costs that are eligible for recovery during the period in which the ISRS will be in effect, and a breakdown of those costs identifying which of the following project categories apply and the specific requirements being satisfied by the infrastructure replacements for each...

(L) For each project for which recovery is sought, the statute, commission order, rule, or regulation, if any, requiring the project; a description of the project; the location of the project; what portions of the project are completed, used and useful; what portions of the project are still to be completed; and the beginning and planned end date of the project.

The petitions did not provide the information required by **subsection (J)** for the July and August costs in that the petitions failed to include an explanation of when the projects were completed because they had not been completed at the time the petitions were filed, and failed to explain when the projects became used and useful because they had not become used and useful at the time the petitions were filed. The petitions also failed to provide the information required by **subsection (K)** for the July and August costs in that the petitions did not provide the net original cost of the replacement, nor could they, because at that point the net original costs were estimates only. In addition, the petitions failed to provide the amount eligible for ISRS and failed to breakdown those costs by assigning them specific project categories. Lastly, the petitions did not provide the



information required by subsection (L) because, for the July and August costs, the petitions failed to provide the law requiring the project, the descriptions of the projects, the locations of the projects, the completed portions of the project, the used and useful portions of the projects, and the beginning and planned end dates of the projects. Accordingly, the Order is unlawful and unreasonable in that it approves a petition that violates Mo. Code Regs. Ann. tit. 4, § 240-3.265(20) (2011).

4. This case should be reheard because the Order is unlawful and unreasonable in that it authorizes the Laclede and MGE ISRS's to include costs incurred for July and August 2015 that violated Mo. Rev. Stat. § 393.1015.2 (Cum. Supp. 2013), which states in relevant part:

(2) The staff of the commission may examine information of the gas corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1009 to 393.1015, and to confirm proper calculation of the proposed charge, and may submit a report regarding its examination to the commission not later than sixty days after the petition is filed.

Here the ISRS statutes create a process whereby the initial review of an ISRS petition is to occur within a sixty (60) day window of time, beginning when the petition is filed. The Order, however, unlawfully and unreasonably limits this 60-day review for the Commission's Staff and for Public Counsel. By allowing Laclede and MGE to include costs incurred after the petitions were filed, the Staff and Public Counsel never realized this 60-day review process for the July and August costs. The July costs, which were never filed with the Commission, were not provided to Staff and Public Counsel until 11-days after the petitions were filed, effectively reducing the 60-day review window to 49

days. The August costs, which were also never filed with the Commission, were not provided to Public Counsel and Staff until 43-days after the petitions were filed, effectively reducing the 60-day review window to 17-days for the August costs. Accordingly, the Order's approval of the petition and the post-petition submission process violates Mo. Rev. Stat. § 393.1015.2 (Cum. Supp. 2013) and violates the public's right to due process under Mo. Const. Art 1, § 10.

5. This case should be reheard because the Order is unlawful and unreasonable in that the petitions do not comply with Mo. Rev. Stat. § 393.1009(2)(b) and § 393.1012.1 (Cum. Supp. 2013). Section 393.1012.1 states in part that "a gas corporation providing gas service may file a petition and proposed rate schedules with the commission to establish or change ISRS rate schedules that will allow for the adjustment of the gas corporation's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements." The petitions filed by Laclede and MGE sought to recover costs that had not been incurred at the time of the petitions and/or were not in service at the time the petitions were filed, and were, therefore, ineligible under § 393.1009(2)(b), which requires infrastructure replacements to be "in service and used and useful."

6. This case should be reheard because the Order is unlawful and unreasonable in that it is not based upon competent and substantial evidence in the record because the July and August costs were never filed with the Commission and never made a part of the evidentiary record. Commission orders must be based on competent and substantial evidence. *Friendship Village v. Public Serv. Comm'n*, 907 S.W.2d 339 (Mo. Ct. App. 1995). The evidence upon which the Commission based its Order does not

include any documentation or details of the actual July and August costs, as required by Mo. Rev. Stat. § 393.1015.1 (Cum. Supp. 2013) and Mo. Code Regs. Ann. tit. 4, § 240-3.265 (2011). Accordingly, the Order is not based on competent and substantial evidence, it includes insufficient findings of fact, and the case should be reheard to enable the required documentation to be filed and reviewed by the Commission.

7. This case should be reheard because the Order is unlawful and unreasonable in that it violates Mo. Rev. Stat. § 386.710 (Cum. Supp. 2013) and Mo. Rev. Stat. § 393.1015 (Cum. Supp. 2013) because the Order fails to recognize Public Counsel's statutory right and obligation to represent ratepayers in this matter. Section §386.710 states that Public Counsel “may represent and protect the interests of the public in any proceeding before or appeal from the public service commission.” To enable Public Counsel to properly represent the interests of the public, the ISRS statutes provide that when an ISRS petition is filed, the gas company “shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules, and its supporting documentation” (§ 393.1015). The Order, however, states that the budgeted project information meets the statutory requirements, “So long as Staff has sufficient time to perform an effective review of ISRS eligibility,” which fails to recognize and provide Public Counsel with a meaningful review of the petitions and data as contemplated by the legislature. An analysis by the Staff, a party with no financial interest in the surcharge, is no substitute for an analysis conducted by the customers forced to pay the single-issue surcharge.<sup>1</sup>

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<sup>1</sup> If the Commission had relied solely upon the Staff's analysis in this case for the March through June costs, as it has for the July and August costs, the Commission would have *allowed* the unlawful telemetry equipment in the ISRS. This exemplifies the importance of

8. This case should also be reheard because the Order violates the Commission's order granting Laclede the authority to acquire MGE, which was conditioned upon the stipulated term that the "transaction shall not have any detrimental effect on Laclede Gas or MGE Division utility customers, including, but not limited to: increased rates..." Case No. GM-2013-0254, *Order Approving Stipulation and Agreement*, Attachment: Stipulation and Agreement, July 17, 2013, p.35. MGE's adoption of Laclede's budgeted ISRS practice, which MGE did not practice before acquisition, is a rate increase that is a result of the acquisition, and which is detrimental to MGE customers.

9. The Commission correctly concluded in its Order that "the Commission should evaluate the eligibility of plant projects narrowly in order to ensure compliance with the legislature's intent." While the Commission made this conclusion in reference to the separate issue involving telemetric equipment, such analysis should apply to the procedural requirements established by the legislature, and the protections specifically included in the statute that require gas companies to serve Public Counsel with the supporting documentation with the petitions. In interpreting the ISRS statute, and its purpose, Public Counsel urges the Commission to interpret the statute in a manner that is in the public interest and affords Public Counsel with a meaningful opportunity to review all costs before such costs are included in rates.

WHEREFORE, the Office of the Public Counsel respectfully requests rehearing of the matters addressed above.

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providing Public Counsel with the meaningful opportunity to review the costs as contemplated by the ISRS statutes and the Commission's rules.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston

Marc D. Poston (#45722)

Chief Deputy Counsel

P. O. Box 2230

Jefferson City MO 65102

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 30<sup>th</sup> day of November 2015.

/s/ Marc Poston

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

In the Matter of the Application of )  
Laclede Gas Company to Change its ) Case No. GO-2015-0341  
Infrastructure System Replacement )  
Surcharge in its Laclede Gas Service )  
Territory )

**RECONCILIATION**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through the undersigned counsel, and respectfully states as follows:

1. In the Commission's *Order Suspending Tariff, Scheduling Evidentiary Hearing and Setting Procedural Schedule* issued in this case on August 11, 2015, the Commission adopted a procedural schedule which directed Staff to file a "Reconciliation of Disputed Items" no later than October 9, 2015.

2. Staff is therefore filing the attached reconciliation, which has been prepared by Staff's auditors, in compliance with the order issued on August 11.

3. As reflected in a footnote in the attached reconciliation, due to a spreadsheet error, the revenue requirement of \$4,499,676 contained in Staff's recommendation previously filed in this case was incorrect. The corrected amount of \$4,497,173, which is reflected in the attached reconciliation, was also reflected in Staff's workpapers which were previously distributed to all parties in this case. This slight difference of \$2,503 will not affect the rate design determined in Staff's Amended Appendix B which was filed herein on October 5 to replace the original Appendix B attached to Staff's recommendation filed on October 2. This correction also affects the

cumulative total of ISRSs in effect which was reported as \$19,676,487 in Staff's recommendation; the corrected amount is \$19,673,984.

**WHEREFORE**, Staff respectfully requests the Commission accept the attached reconciliation.

Respectfully submitted,

/s/ Jeffrey A. Keevil

Jeffrey A. Keevil  
Missouri Bar No. 33825  
Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 526-4887 (Telephone)  
(573) 751-9285 (Fax)  
Email: jeff.keevil@psc.mo.gov

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record this 9<sup>th</sup> day of October 2015.

/s/ Jeffrey A. Keevil

Laclede Gas Company  
 ISRS Case No. GO-2015-0341  
 Reconciliation of Contested Issues

	Staff	Laclede	OPC
Total Revenue Requirement	4,497,173 <sup>1</sup>	4,497,173 <sup>2</sup>	4,497,173 <sup>3</sup>
<i>Value of Contested Issues:</i>			
True-Up (July & August Data)	-	-	(1,931,053)
Regulator Stations	-	-	(142,312)
Telemetry Equipment	-	-	(40,276)
Revenue Requirement less Contested Issues	<u>4,497,173</u>	<u>4,497,173</u>	<u>2,383,532</u>

<sup>1</sup> Please note that due to a spreadsheet error, the revenue requirement shown in Staff's recommendation of \$4,499,676 was incorrect. The corrected amount of \$4,497,173 which is reflected in this reconciliation was also reflected in Staff's workpapers which were distributed to all parties in this case. This slight difference of \$2,503 will not affect the rate design determined in Staff's Amended Appendix B which was filed herein on October 5 to replace the original Appendix B attached to Staff's recommendation filed on October 2. This correction also affects the cumulative total of ISRSs in effect which was reported as \$19,676,487 in Staff's recommendation; the corrected amount is \$19,673,984.

<sup>2</sup> Laclede has indicated acceptance of Staff's recommended revenue requirement.

<sup>3</sup> OPC has not indicated opposition to Staff's recommended revenue requirement other than the listed contested issues.



**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                             )  
Case No. GO-2015-0343

**RECONCILIATION**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through the undersigned counsel, and respectfully states as follows:

1. In the Commission's *Order Setting Joint Evidentiary Hearing* issued in this case on August 27, 2015, the Commission ordered that "The parties in File No. GO-2015-0343 shall comply with the procedural schedule in File No. GO-2015-0341, as set by the Commission in its order issued on August 11, 2015, in File No. GO-2015-0341."

2. The August 11 order issued in GO-2015-0341 adopted a procedural schedule which directed Staff to file a "Reconciliation of Disputed Items" no later than October 9, 2015.

3. Staff is therefore filing the attached reconciliation, which has been prepared by Staff's auditors, in compliance with the orders referenced above.

**WHEREFORE**, Staff respectfully requests the Commission accept the attached reconciliation.

Respectfully submitted,

/s/ Jeffrey A. Keevil

Jeffrey A. Keevil

Missouri Bar No. 33825

Attorney for the Staff of the

Missouri Public Service Commission

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to counsel of record this 9<sup>th</sup> day of October, 2015.

/s/ Jeffrey A. Keevil

Laclede Gas Company (Missouri Gas Energy Territory)  
 ISRS Case No. GO-2015-0343  
 Reconciliation of Contested Issues

	Staff	MGE	OPC
Total Revenue Requirement	1,878,151	1,878,151 <sup>1</sup>	1,878,151 <sup>2</sup>
<i>Value of Contested Issues:</i>			
True-Up (July & August Data)	-	-	(1,111,261)
Revenue Requirement less Contested Issues	<u>1,878,151</u>	<u>1,878,151</u>	<u>766,890</u>

<sup>1</sup> MGE has indicated acceptance of Staff's recommended revenue requirement.

<sup>2</sup> OPC has not indicated opposition to Staff's recommended revenue requirement other than the listed contested issue.