BEFORE THE PUBLIC SERVICE COMMISSION OF

THE STATE OF MISSOURI

In the Matter of Laclede Gas Company's Request to Increase Its Revenue for Gas Service	))	**File No. GR-2017-0215**
In the Matter of Laclede Gas Company d/b/a Missouri Gas Energy's Request to Increase Its Revenues for Gas Service	)))	**File No. GR-2017-0216**

INITIAL BRIEF OF THE
OFFICE OF THE PUBLIC COUNSEL

Respectfully submitted,

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INTRODUCTION

Spire is a publicly-traded Missouri general business corporation in good standing and a public utility holding company; its principal Laclede of business is 700 Market Street, 6th Floor, St. Louis, Missouri 63101.[1] Since April 28, 2016, The Laclede Group has been known as Spire, Inc. Spire owns and controls among other utilities and corporations, Laclede Gas Company ("Laclede) and Missouri Gas Energy (MGE). Laclede is a natural gas distribution utility system ") and serves customers in St. Louis and eastern Missouri.[2] MGE, which the Laclede Group purchased from Southern Union Company in September 2013, is a natural gas distribution utility system operating in western Missouri and it serves customers in the Kansas City and Joplin area. It is a division of Laclede.[3] Combined, LACLEDE and MGE serve 1.1 million Missouri customers and are the largest natural-gas utility in Missouri.

On April 11, 2017, Laclede (n/k/a Spire Missouri Inc. d/b/a Spire (the Company), filed revised tariff sheets proposing to increase rates for gas service provided to its captive customers in its eastern Missouri service area (n/k/a Spire Missouri East, but referred to herein as Laclede). The revised tariff sheets had a proposed effective date of May 11, 2017 and proposed an overall increase of approximately $58.1 million, suggesting an increase of approximately $28.6 million, on top of an approximately $29.5 million increase to customers that was already being recovered from customers through Infrastructure System Replacement Surcharge (ISRS).

Also on April 11, Laclede d/b/a Missouri Gas Energy (n/k/a as Spire Missouri West but referred to herein as MGE) filed revised tariff sheets proposing to increase customers' rates for

[1] Records of the Missouri Secretary of State; The Laclede Group, Inc., Form 10-K, filed November 24, 2015.
[2] *Id.*
[3] *Id.*

natural gas service provided to its captive customers in its western Missouri service area. These revised tariff sheets bore a proposed effective date of May 11, 2017, and asked for an overall increase of about $50.4 million, consisting of an increase of approximately $37 million on top of the approximately $13.4 million increase in customer revenues that was already being recovered from captive consumers through MGE's ISRS.

On the same date, the Companies filed prepared direct testimony for both Laclede and MGE. By Order dated May 19, 2017, the Commission suspended the proposed tariff sheets and established due dates for interventions and the filing of a procedural schedule in the two proceedings. In subsequent Orders the Commission granted applications to intervene of Consumers Council of Missouri; MoGas Pipeline, LLC; USW Local 11-6; the City of St. Joseph, the Missouri Department of Economic Development - Division of Energy (DE), the Missouri Industrial Energy Consumers (MIEC); the Missouri School Boards' Association (MSBA), the Midwest Energy Consumers Group (MECG), the National Housing Trust (NHT) and the Environmental Defense Fund (EDF).

This is an overearnings case in which the Company has been able to increase rates between rate cases due to the ISRS. This has placed the Company in a position to earn above its allowed rate of return. The Staff's current recommended revenue requirement for settled issues at Staff's midpoint of a Return of 6.31% is 15,420,268 for Laclede and it is 9,881,174 for MGE.[4] The revenue requirement amounts do not include the value of the issues that have not yet been resolved.

[4] Ex. 296, Staff Accounting Schedules Jan. 3, 2018(Laclede) and Ex. 297, Staff Accounting Schedules Jan. 3, 2018 (MGE).

STATEMENT OF FACTS

Laclede Gas Company and its operating division Missouri Gas Energy provide retail natural gas service to the public in the eastern and western parts of Missouri.

On April 11, 2017, in Case Nos. GR-2017-0215 and GR-2017-0216, respectively Laclede Gas Company ("Laclede") d/b/a Missouri Gas Energy)("MGE") filed revised tariffs proposing rates, which, if granted, would result in unjust and unreasonable rates for around 1 million Missouri natural gas consumers.

As a result of settlement discussions, all of the parties to the cases have either agreed to the terms of three Partial Stipulations and Agreements or indicated that they will not oppose it.

The first of these Partial Stipulations and Agreements, filed on December 13, includes the following terms: Revenue Requirement Exclusive of Disputed Issues, Class Structure, Tariff modifications, Off- System Sales and Capacity Release Sharing Mechanism, unchanged Depreciation rates, resetting the ISRS to zero, Insurance, St. Peters Lateral costs, no Billing Conversion to therms, Officer Expenses, and some Energy Efficiency programs.[5]

The Partial Second Stipulation and Agreement filed on December 20 described the parties agreement for rate design.[6] The third Partial Stipulation and Agreement also filed on December 20 resolved the following issues: Transition Costs relating to the acquisition of MGE, Capitalization of Hydrostatic Testing, Cash Working Capital, newBlue Software Allocations, and Rebranding Costs.[7]

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[5] Partial Stipulation and Agreement, filed 12/13/2017.

[6] Non-unanimous Stipulation Regarding Revenue Allocation and Non-Residential Rate Design. filed 12/20/2017

[7] Partial Non-unanimous Stipulation and Agreement, filed 12/20/2017.

Public Counsel recommends the Commission resolve the issues to assure Spire provides safe and adequate service at only the just and reasonable rate Below Public Counsel addresses the remaining issues for Commission decision in the order listed in the December 1, 2017 Amended List of Issues, Order of witnesses and Order of Cross-Examination filed by Staff on behalf of the parties to the case.

First, OPC will address issues related exclusively to Laclede.

I. Laclede only issues

A. Forest Park Property

i. How should any gain resulting from the sale of the Forest Park property be treated for ratemaking purposes?

The Forest Park property was a rate base asset and, therefore, the resulting gain on the sale should be used to offset the cost increases of the properties purchased to replace the Forest Park property. The Commission has expressed that it is open to different ratemaking positions on gain on sale of utility assets and OPC's proposed ratemaking treatment is fair and equitable to all parties in that it results in a lower cost for Laclede to provide utility service. OPC's proposal would also serve to discourage utilities from "gaming the system" to sell rate base assets at a gain so that its shareholders can confiscate the gains on sale of utility assets and then require customers to pay to replace with the same type of assets. Adopting Laclede's position would encourage utilities to manipulate asset sales to report higher profits to shareholders. Both the Forest Park building and the majority of the land and buildings that were sold to IKEA were reflected in customers' rates for decades. Any gain from that sale should be used to offset Laclede's cost of its Manchester replacement facility.

ii. How should the relocation proceeds from the sale of the Forest Park property, other than proceeds used for relocation purposes or contributed to capital for the benefit of customers, be treated for ratemaking purposes?

Relocation proceeds should be applied to the replacement facility. Laclede constructed a new facility referred to as the Manchester Service Center (Manchester).[8] The Forest Park property was a used and useful part of Laclede's service to its customers. As part of the sale, Laclede received a non-recurring gain on the sale of the property.[9] The Commission should order that the remaining proceeds of $3.5 million be applied toward the $7.7 million construction cost of LACLEDE's Manchester replacement facility. [10]

II. MGE Only Issues

A. Kansas Property Tax

i. What is the appropriate amount of Kansas property tax expense to include in MGE's base rates?

LACLEDE, MGE, Staff and Public Counsel all agree and recommend the Commission include $1,454,069, which is the average (2009-2016) of Kansas property taxes, as calculated by Staff, be included in rates.

ii. Should the tracker for Kansas property tax expense be continued?

While Public Counsel generally opposes trackers as a mechanism that reduces the Companies' investment risk by shifting that risk to ratepayers, it supports Staff's position in this case to continue the tracker for a short period of time, because it is difficult to predict an appropriate level of ongoing costs, and Staff witness Karen Lyons made the recommendation to continue a tracker mechanism until the Companies' next rate case, in order to have sufficient information to normalize this expense going forward.[11]

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[8] Ex. 403 Direct Testimony OPC witness Charles Hyneman Schedule CRH-D-1.
[9] Ex. 403 Direct Testimony OPC witness Charles Hyneman. P. 5:22-25
[10] *Id.*
[11] Ex. 252, p. 4:12-19.

III. Common Issues

A. Cost of Capital

i. Return on Common Equity – What is the appropriate return on common equity to be used to determine the rate of return?

If the Commission does not adopt any of Laclede and MGE proposals to shift additional risk from the Companies to their customers, the Commission should order a rate of return of 9.20% for Laclede and MGE, which is approximate midpoint of OPC's witness Mr. Michael Gorman's estimated range of 8.90% to 9.40%.

If the Commission adopts any risk shifting proposals, the Commission should make a significant reduction in the rate of return. This includes proposals to approve discriminatory socialization of credit card fees and "revenue stabilization" mechanisms of any sort.

In recent past utility rate cases, the Commission has repeatedly recognized Mr. Michael Gorman to be a highly credible rate-of-return witness and has repeatedly relied on his analysis in determining an appropriate return on equity for Missouri utility companies. For example, the Commission has found Michael Gorman to be the most credible and most understandable of three of the ROE experts who testified in ER-2012-0166.[12] That case, like this case, also featured expert witnesses Mr. Gorman, Mr. David Murray, and Mr. Robert Hevert. As another example, the Commission has also found Michael Gorman does the best job of presenting the balanced analysis the Commission seeks.[13]

In this case, Mr. Gorman has prepared a return on equity analysis that relies upon a proxy group of six natural gas public utilities. This proxy group is consistent with that relied upon by Laclede / MGE witness Ahern except that Mr. Gorman excluded Chesapeake Utilities Corp.

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[12] Case No. ER-2012-0166, *Report and Order*, issued December 12, 2012, at page 70.
[13] Case No. ER-2007-0004, *Report and Order*, issued May 17, 2007, at page 62.

"because it was not rated by S&P or Moody's because, absent such a rating, it is impossible to know if Chesapeake is a true proxy for Laclede / MGE.

With the exclusion of Chesapeake Utilities, the proxy group utilized by Mr. Gorman is a good fit for conducting a return on equity analysis for Laclede / MGE. As Mr. Gorman points out, "[t]he proxy group has an average corporate credit rating from S&P of A-, which is identical to the Companies' credit rating. The proxy group has an average corporate credit rating from Moody's of A2, which is a notch lower than the Companies credit rating of A1."[14]

Based upon financial metrics for this proxy group, Mr. Gorman presented a return on equity analysis that relies upon several different forms of the discounted cash flow; risk premium; and capital asset pricing models. Specifically, Mr. Gorman provided the results of three versions of the discounted cash flow model resulting in a return on equity of 8.9%.[15] Additionally, Mr. Gorman conducted a risk premium analysis that results in a return on equity of 9.2%.[16] Finally, Mr. Gorman conducted a capital asset pricing model analysis resulting in a return on equity of 9.4%.[17] His concluding "recommended return on equity of 9.20% is at the approximate midpoint of my estimated range of 8.90% to 9.40%."[18]

In addition to Mr. Gorman's credible recommendation, Staff witness Mr. David Murray also produced an independent ROE analysis which is within 5 basis points of Mr. Gorman's recommendation.[19] Mr. Murray's range of 9.0% to 9.5% results in a mid-point of 9.25%.[20] Mr. Murray's return on equity recommendation further substantiates Mr. Gorman's recommendation.

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[14] *Id.* p. 22, Lines 1-8.
[15] *Id*. pp. 22-37.
[16] *Id.* pp. 37-43.
[17] Ex. 407. direct testimony of OPC witness Gorman, Pgs. 43-49.
[18] *Id.* p. 50.
[19] Ex. 204, Staff's Class Cost of Service Report of Spire Missouri, Inc., d/b/a Spire, Pg. 1, Lines 7-10.
[20] *Id*.

In contrast, Company witness Ahern propounds a flawed return on equity analysis. Ms. Ahern "estimates a return on equity of 10.00%".[21] The 10.00% return on equity is then inflated to 10.35% by "adding a business risk adjustment of 20 basis points, and a flotation cost adder of 16 basis points."[22] In addition, Ms. Ahern's proposed inflationary adjustments for business risk and flotation costs are misplaced.

As Mr. Gorman points out, Ms. Ahern's Discounted Cash Flow ("DCF") analysis relies on an average growth rate of 5.80% that "is substantially higher than the consensus economists' projected growth rate for the economy (4.2%)."[23] As Mr. Gorman concludes then, Ms. Ahern's DCF analysis is acceptable as a "reasonable high-end DCF result."[24] That said, Ms. Ahern rejects the results of her DCF analysis on the basis of claimed rise in market prices, the use of accounting measures as proxies for capital appreciation, and the dramatic rise in interest rates and capital costs. As Mr. Gorman points out,[25] Ms. Ahern's rationale for rejecting the results of her DCF analysis is misplaced. Ultimately, Mr. Gorman concludes that "the application of a DCF analysis produces reasonable and accurate estimates of the current market cost of equity for the utility companies of similar investment risk."[26]

In addition, Ms. Ahern's risk premium and Capital Asset Pricing Model ("CAPM") results are not an appropriate proxy for a Laclede/ MGE return on equity. As Mr. Gorman shows, by utilizing more reasonable inputs, Ms. Ahern's risk premium estimate is reduced from 10.57% to 8.80%.[27] Similarly, Ms. Ahern's CAPM result is reduced from 9.11% to 8.80%.[28]

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[21] Ex. 38, Direct Testimony of Pauline Ahern, Pg. 46, Lines 8-13.
[22] Ex 414, rebuttal testimony of OPC witness Michael Gorman, p.16.
[23] *Id.* p. 24
[24] *Id*. (emphasis added).
[25] Ex. 414 Rebuttal Testimony of OPC witness Gorman, p. 24-25.
[26] Ex 414, at p. 25.
[27] Ex. 414, at p. 26.
[28] Ex. 414, at p. 25.

Ms. Ahern's business risk and flotation cost inflationary adjustments are similarly misplaced. Specifically, Ms. Ahern claims that because of the alleged size of Laclede / MGE, there are alleged investment risks that must be reflected in an increase to the authorized return on equity. As Gorman correctly points out, however, Laclede / MGE is not a stand-alone company, but is part of the larger, publicly traded Spire, Inc. As part of Spire, Laclede / MGE have entered into a service agreement with Spire "to receive services from its parent company structure."[29] These services include "management expertise, access to capital, and technical expertise such as legal, engineering, financial and IT."[30] Given the fact that Laclede / MGE are part of a much larger corporate entity, any stand-alone investment risk is mitigated. In fact, recognizing that Spire owns natural gas subsidiaries in numerous regions in the nation, this geographic diversity in operations "can mitigate small company risk,"[31] for which Ms. Ahern unreasonably requests adjustments.

Additionally, Ms. Ahern's attempts to inflate a return on equity by implementing a flotation cost adjustment should be similarly rejected. Ms. Ahern incorrectly estimates that there would have been three issuances of common equity over the period of May 2013 through May 2016 that would have resulted in flotation costs of approximately $59 million. As Mr. Gorman correctly points out, however, common equity for Laclede / MGE is not derived from stock issuances, but is largely the result of retained earnings. Recognizing that there are no flotation costs associated with retained earnings, there is no need for a flotation cost adjustment.[32]

Additionally, OPC argues that the Commission should find no merit in Ms. Ahern's scare tactics during the evidentiary hearing. At the evidentiary hearing, counsel for OPC thought he heard Ms. Ahern state her opinion that the threat of nuclear war was one of the reasons why this

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[29] Ex. 414, at p. 20.
[30] Ex 414.
[31] Ex. 414.
[32] Ex. 414, Rebuttal Testimony of OPC witness Gorman, p. 23.

Commission should consider giving Spire a higher ROE. On cross, Ms. Ahern stated "no" in response to OPC counsel's question about whether Ms. Ahern previously indicated that Spire should have a higher ROE because of the risk of nuclear war.[33] OPC has been able to review the transcript, and Ms. Ahern did actually respond that "we may have a nuclear war… [which increases geopolitical risk]" in response to Chairman Hall's question asking what has happened with the capital market since 2014 "that would motivate us, the Commission, to award a higher ROE?"[34] OPC argues that the Commission should find no merit in Ms. Ahern's scare tactics.

In the final analysis, a return on equity of 9.2% (range of 8.9% to 9.4%) is consistent with the dictates of the Supreme Court *Hope* and *Bluefield* standards and adequately compensates shareholders for the cost of equity and would result in just and reasonable rates for customers.

ii. Capital Structure – What capital structure should be used to determine the rate of return?

As with any other expense item, the Commission must consider whether the utility's capital structure is managed in a manner consistent with providing just and reasonable rates. In its true-up testimony, LACLEDE / MGE propose a capital structure that consists of 54.2% common equity and 45.8% long-term debt.[35] As Mr. Gorman points out, however, the proposed capital structure is equity rich.[36] To the extent that a utility unnecessarily includes an excessive amount of equity instead of debt in its capital structure, resulting rates will not be just and reasonable. Mr. Gorman reasonably and fairly recommends a capital structure that consists of 47.2% equity and 52.8% long-term debt.

[33] Tr. Vol. 17, p. 1168:10-15.
[34] Tr. Vol. 17, p. 1155:21 – p. 1156: 20.
[35] Ex. 66, True-Up Direct Testimony of Glenn Buck, Pg. 2, Lines 10-14
[36] Rebuttal Testimony of Michael Gorman, Pg. 9, Lines 23-24

The unreasonable nature of the Laclede / MGE capital structure is made readily apparent by analysis of the capital structure utilized by state utility commissions in setting gas rates. Over the period of 2010-2017, the average capital structure used for ratemaking purposes has consisted of 51.05% common equity.[37] Thus, the equity component in the Laclede / MGE capital structure is clearly excessive and the Commission should reject it and adopt Mr. Gorman's recommendation.

One of the fundamental reasons that the Laclede / MGE proposed capital structure is equity rich is the fact that Laclede / MGE seeks to include goodwill as equity in the capital structure. Mr. Gorman explains that this is improper in that goodwill is a paper asset that is recorded at the time of acquisitions.[38] In essence, it represents the premium over book value that Spire paid for the acquisition of other utilities.[39] As such, it is not a tangible asset that is used to provide service to ratepayers.[40] Mr. Gorman further clarifies that, since it is not a tangible asset used to produce a cash flow, it cannot be assumed to be funded by debt.[41] Consequently, it would be imprudent to finance a goodwill asset with debt.[42]

From a credit rating perspective, a goodwill asset has no economic value.[43] A goodwill asset, unlike infrastructure investments that are included in a utility's rate base, produces no cash flow.[44] The existence of a goodwill asset also cannot be funded by debt because it cannot produce cash flows adequate to meet the debt service obligations on a debt security.[45] It would be imprudent to finance a goodwill asset with debt, because the goodwill asset would default on the obligations to meet the debt service obligation of a debt, and would cause significant distress on

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[37] Ex. 414, rebuttal testimony of OPC witness Michael Gorman, p. 12 (Table 3)
[38] Ex. 414 at p. 7: 13-23.
[39] *Id*.
[40] *Id*.
[41] Ex. 414, at p. 8:1-13.
[42] *Id*.
[43] *Id*. at p. 7: 24.
[44] *Id*. at p. 7:24-26.
[45] *Id*. at p. 8:26 – p. 8:1-2.

the utility's credit standing, and ability to operate as a financially sought going concern.[46] Therefore, these premium payments that represent transactions between shareholders can only prudently and reasonably be financed by utility common equity.

As Mr. Gorman verified, when goodwill is eliminated as a component of equity in the capital structure, a capital structure that is consistent with the Spire consolidated capital structure appears.[47] In addition to making the goodwill adjustment, Mr. Gorman also corrected the capital structure to reflect a $170 million bond issue used to retire the Company's short-term debt, which resulted in a common equity ratio of 47.2%.

The unreasonable nature of the Laclede / MGE capital structure is also exhibited in that the capital structure is not reflective of ongoing operations. Instead, the capital structure appears to be manipulated resulting in a greater revenue deficiency and, therefore, a request for higher rates in this case. As Mr. Gorman states in his rebuttal testimony, the Laclede / MGE capital structure has historically consisted of 50% common equity.[48]

In conclusion, the Laclede / MGE proposed capital structure contains too much equity. This equity-rich capital structure is a result of the decision to classify goodwill as equity in the proposed capital structure. In addition, the unreasonable nature of the Laclede / MGE proposed capital structure is reflected in the capital structure by the Companies over the past several years as well as that used by other state utility commissions in establishing gas rates.

iii. Cost of Debt – What cost of long-term debt should be used to determine the rate of return?

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[46] *Id*. at 7-8.
[47] Ex. 414 OPC witness Gorman's Rebuttal Schedule MPG-R-3 (page 2).
[48] Ex. 414 at , p. 5.

OPC, MIEC, and MECG agree with Spire that the appropriate cost of long-term debt is 4.159%.[49]

iv. Should short-term debt be included in the capital structure? If so, at what cost?

Short-term debt should not be included in the determination of the capital structure. In his testimony, Mr. Gorman developed a reasonable capital structure consisting of 47.2% equity and 52.8% long-term debt based on Spire's refinancing of its short-term debt with long-term debt. The proposed capital structure should not include any short-term debt unless the Commission were to give rate base treatment to natural-gas inventories and propane-carrying costs.

B. What level of rate case expense should be paid by ratepayers.

The Commission should share the expense between ratepayers and shareholders. OPC recommends the Commission follow the methodology it established in Case No. ER-2014-0370. Consistent with the Commission's treatment of rate case expense in this case, rate case expense should be shared between ratepayers and shareholders based on the ratio of Laclede and MGE's Commission-authorized-revenue-requirement increase to their requested revenue requirement increase, net of Staff's adjustments. The total amount of rate case expense should be split between Laclede and MGE based on the requested revenue requirement increase contained in Laclede Direct case filings. The adjusted, allocated amount of rate case expense should be recovered over four years.

IV. Laclede-MGE Common Issues

A. Cost allocation Manuals (CAMs)

i. Should a working group be created following this rate case to explore ideas for modifying the Laclede and MGE CAMs?

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[49] Ex. 407, OPC witness Michael Gorman direct testimony, p. 19.

Not immediately. Since the Commission approved Laclede Gas Company's (n/k/a Spire Missouri) cost allocation manual in 2013,[50] its parent, The Laclede Group, n/k/a Spire, has acquired affiliates (including operating companies Alagasco and EnergySouth), and a new operating business unit (MGE),[51] and created additional affiliates.[52] It also "has adopted a shared services model to manage the cost of providing common and centralized or center-led services across its operating companies and business units."[53] Even Spire Missouri does not seriously dispute that these acquisitions, new affiliates, and the creation of Shared Services Corporation as part of Spire's implementation of its shared services model makes Spire Missouri's 2013 Laclede Gas Company's CAM inadequate.[54] What Spire Missouri requires is a Commission-approved cost allocation manual that would:

- Make transparent Spire Missouri's compliance with the Commission's affiliate transactions rule 4 CSR 240-40.015;

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[50] The Commission approved that manual by its order dated August 14, 2013, a copy of which may be found in Ex. 403, OPC witness Charles R. Hyneman, direct testimony, Schedule CRH-D-3 and in the Commission's files for *The Staff of the Missouri Public Service Commission v. Laclede Gas Company*, Case No. GC-2011-0098.

[51] Ex. 46, Spire Missouri witness Thomas J. Flaherty, direct testimony, pp. 5, 15 (EnergySouth) and 65 (MGE and Alagasco); Ex. 47, Spire Missouri witness Thomas J. Flaherty, rebuttal testimony, pp. 1-2. *In the Matter of the Joint Application of Southern Union Company d/b/a Missouri Gas Energy, The Laclede Group, Inc. and Laclede Gas Company for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets and Liabilities from Southern Union Company to Laclede Gas Company and, in Connection Therewith, Certain Other Related Transactions*, 23 Mo. P.S.C. 3d 133, Case No. GM-2013-0254.

[52] Ex. 400, OPC witness Ara Azad, direct testimony, p. 11, Ex. 403, OPC witness Charles R. Hyneman, direct testimony, pp. 17-18.

[53] Ex. 46, Spire Missouri witness Thomas J. Flaherty, direct testimony, p. 13.

[54] Excerpt from Spire Missouri, Inc. attorney Pendergast opening statement, Tr. 19: 1791: "Spire is certainly a different company today than it was in 2013 when the CAM was first approved. We obviously have a larger corporate family with our acquisitions of Alagasco and Energy South. And given those, we'd be the first to say that looking anew at the CAM and considering updates and modernizing it to reflect our current state is a worthwhile endeavor." Spire Missouri, Inc. position statement: "Should a working group be created following this rate case to explore ideas for modifying the Laclede and MGE CAM? **Laclede/MGE Position**: The Company is one of the few utilities in the state that has an approved Cost Allocation Manual. Nevertheless, the Company would not be opposed to participating in a working group to discuss potential improvements to its CAM**."**

- Treat the operations of both Laclede (Spire Missouri East) and MGE (Spire Missouri West) separately; and
- Require employees who charge costs that directly or indirectly impact Spire's Missouri-regulated utility operations to annually participate in cost allocations training that includes discussion of the impacts of improper cost allocation on all stakeholders, including ratepayers.[55]

To create a cost allocation manual that achieves these goals, the Commission should order that, after an independent third party external auditor is retained and can begin providing recommendations, interested stakeholders, including Spire Missouri, Commission Staff, and the Public Counsel, starting with general components and internal controls of the cost allocation manual the Commission approved for Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company to use in Case No. ER-2016-0285[56] and, with the auditor's recommendations, work collaboratively together to develop a new mutually agreeable cost allocation manual for Commission approval.

The basis for Spire Missouri's new cost allocation manual should be the Commission-approved Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company cost allocation manual because those utilities are part of a holding company structure similar to Spire's,[57] the Public Counsel, Staff, and Kansas City Power & Light Company recently

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[55] Ex. 400, OPC witness Ara Azad, direct testimony, pp. 5-9.

[56] Ex. 425, OPC witness Charles R. Hyneman, surrebuttal testimony, p. 26; *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement A General Rate Increase for Electric Service*, *Non-Unanimous Partial Stipulation and Agreement*, filed February 10, 2017, approved in *Report and Order* filed May 3, 2017, effective May 13, 2017. Given that the Commission approved a cost allocation manual for Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company, it is unclear why *In the Matter of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company's Application for Approval of Cost Allocation Manual*, Case No. EO-2014-0189, remains open.

[57] *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement A General Rate Increase for Electric Service*, Case No. ER-2016-0285, *Non-Unanimous Partial Stipulation and Agreement*, filed February 10, 2017, pp. 48-51 of 113, approved in *Report and Order* filed May 3, 2017, effective May 13, 2017. Ex.

developed that cost allocation manual. That manual is the basis for cost allocation manuals now being developed for Union Electric Company d/b/a Ameren Missouri[58] and The Empire District Electric Company.[59] The independent third-party external auditor would address how Spire Missouri's specific current cost allocation methods, processes, and their implementation and compliance can be improved, which is valuable information for designing Spire Missouri's CAM.

To focus those collaborating on Spire Missouri's CAM, the Commission should set a goal of Spire Missouri filing its new cost allocation manual with the Commission six months after the Commission approves new general Spire Missouri rates in this case.[60]

For transparency and to encourage Spire Missouri to comply with its CAM, the Commission should require Spire Missouri, as it currently requires of Laclede,[61] to file annual cost allocation reports that show that it is complying with its CAM and with the Commission's affiliate transactions rule 4 CSR 240-40.015.[62] The annual cost allocation reports should report Laclede and MGE separately and include, but not be limited to, allocation factor calculations for every factor utilized during the year, documentation of the changes to these allocation factors made during the year, the basis used (e.g., fair market value, fully distributed cost, etc.) to record each type of affiliate transaction, the total amounts of all affiliated transactions by entity and account charged, and a complete list of all contracts with affiliates.[63] To assist the Commission and others in the future, the Commission should also require Spire Missouri to file with the Commission Spire

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[47] Spire Missouri witness Thomas J. Flaherty, rebuttal testimony, pp. 34, as corrected by his testimony at Tr. 19:1837-38.

[58] See *In the Matter of Union Electric Company d/b/a Ameren Missouri's Cost Allocation Manual (CAM)*, Case No. EO-2017-0176.

[59] Ex. 403, OPC witness Charles R. Hyneman, direct testimony, pp. 18-19.

[60] Ex. 425, OPC witness Charles R. Hyneman, surrebuttal testimony, p. 26.

[61] See Ex. 400, OPC witness Ara Azad, direct testimony, confidential attachment titled, "COST ALLOCATION MANUAL Annual Report for the Fiscal Year Ending September 30, 2016."

[62] Ex. 400, OPC witness Ara Azad, direct testimony, p. 8.

[63] Ex. 400, OPC witness Ara Azad, direct testimony, p. 8.

Missouri's five-year pre- and post-transaction analysis of the cost impacts on Spire's Missouri-regulated utility operations that Spire anticipates will occur due to each future Spire acquisition, merger or divestiture.[64]

ii. Should an independent third-party external audit be conducted of all cost allocations and all affiliate transactions, including those resulting from Spire's acquisitions, to ensure compliance with the Commission's Affiliate Transactions Rule, 4 CSR 240-20.015 (sic)[65]?

Yes. Other than limited rate case reviews, no audit of Spire's cost allocations and affiliate transactions has been conducted in many years, if at all. Spire has acquired several utilities since 2013 with no oversight on how costs are allocated to the various Spire entities. In a Staff Report filed in 2016 the Staff raised significant concerns with Laclede's cost allocations and affiliate transactions. An independent audit will be a first step the Commission can take to mitigate the significant concerns with Spire's policies, procedures and affiliate rule compliance. The mere fact that Laclede opposes any outside review should raise additional concerns. Although Spire valued his time at $650 per hour,[66] the Commission should not rely on Spire's consultant Thomas J. Flaherty's review of Spire's processes for compliance with its cost allocation manual, as his testimony was not intended to evaluate the sufficiency of Spire Missouri's CAM or Spire Missouri's implementation of that manual,[67] nor was it intended to determine the company's compliance with the Commission's Affiliate Transactions rule 4 CSR 240-40.015.[68] Furthermore, his analysis was too superficial to assess the reasonableness of charges allocated to Missouri

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[64] Ex. 400, OPC witness Ara Azad, direct testimony, p. 7.
[65] The correct rule cite is 4 CSR 240-40.015.
[66] Spire Missouri witness Thomas J. Flaherty, Tr. 19:1840; Ex. 254, Staff witness Majors surrebuttal testimony, p. 8.
[67] Ex. 46, Spire Missouri witness Thomas J. Flaherty, direct testimony, p. 4.
[68] Ex. 426, OPC witness Ara Azad, surrebuttal testimony, pp. 11-12.

utilities.[69] Thus, it should not be used as a substitute for the audit the Public Counsel proposes. Further, there are indications that Mr. Flaherty's work in this rate case is deficient.

At the evidentiary hearing Mr. Flaherty acknowledged that he had omitted to identify the testimony of a witness with whom his rebuttal testimony should be read in conjunction,[70] he admitted he erroneously accused OPC witness Ara Azad of not providing workpapers and information to him when the only effort he made to obtain information was to prepare data requests for Spire Missouri to serve on her that it failed to serve,[71] he admitted he had erroneously described Spire's enterprise structure as of October 17, 2017,[72] he acknowledged that he had not found any affiliate costs to be unreasonable since the 1980s,[73] and he admitted that while he had provided his services to commissions or their staffs in the past, since the late 1980s he has only provided his services to companies such as Spire.[74] For all these reasons the Commission should not be persuaded by his testimony or work product.

Spire Missouri has a long history of noncompliance with the Commission's affiliate transactions rule 4 CSR 240-40.015 as OPC witness Hyneman explains in his surrebuttal testimony:

> As a member of Staff's Auditing Department from 1993 to 2015 I became aware of the Staff's serious concerns with Laclede's affiliate transactions over a period of several years. The Staff had particular concerns with Laclede's compliance with the affiliate transaction rule. The Staff also had serious concerns with Laclede's failure to adhere to its transparency commitments made to the Commission related to its transactions with Laclede's affiliates, including LER (Laclede Energy Resources).
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> For example, in Staff's Revenue Requirement Cost of Service Report in Laclede's 2010 general rate case, No. GR-2010-0171, the Staff stated at page 53, "The Staff

[69] Ex. 426, OPC witness Ara Azad, surrebuttal testimony, pp. 11-12.
[70] Tr. 19:1829.
[71] Tr. 19:1829-32.
[72] Tr. 19:1833-38.
[73] Tr. 19:1846-47.
[74] Tr. 19:1847-48.

> has serious concerns that the Company's policies, procedures and methods for its allocation of costs to its various affiliates is inadequate to prevent Laclede Gas' customers from paying expenses that are related to affiliates."[75]

Mr. Hyneman provides as a schedule to his surrebuttal testimony in this case a copy of the Commission Staff's report in Case No. GM-2016-0342.[76] On pages 27-28 of that report, Staff stated:

> When Laclede Gas filed Case No. GM-2001-342, seeking authority to restructure as a holding company, it filed a proposed Cost Allocation Manual ("CAM") with the Direct Testimony of Patricia A. Krieger. However, at that time, the Commission's Affiliate Transactions Rules were on appeal. Several companies, including Laclede, had challenged the Commission's authority to promulgate the rules. In 2003, two years after the reorganization case was over, the Missouri Supreme Court affirmed the Commission's rules. Since the rules were on appeal at the time Laclede sought to restructure, one of the conditions in the *Unanimous Stipulation and Agreement* required that the CAM be in the form contained in the direct testimony of Patricia A. Krieger and that it contain a laundry list of information set out in the *Unanimous Stipulation and Agreement.*
>
> The Krieger CAM contained asymmetrical pricing provisions for affiliate transactions, as do the Commission's rules. However, the CAM that Laclede Gas adopted in 2004 was not in the form contained in the direct testimony of Patricia A. Krieger as required by the *Unanimous Stipulation and Agreement*. It also did not comply with the Commission's Affiliate Transaction Rules. (Footnote omitted).

Likewise, OPC witness Azad identified a number of concerns in her review of Spire's allocations of shared services and affiliate transactions in the current preceding despite, as she testified in her direct testimony, Spire Missouri's continuing Laclede of transparency in this case. In her testimony she pointed out a myriad of issues she encountered in obtaining information from Spire Missouri—Spire Missouri took over 20 days to respond to 113 of 137 data requests OPC issued to it pertaining to cost allocations, many responses were vague, many responses cross-referenced other responses that did not address the request, and Spire Missouri designated

[75] Ex. 425, OPC witness Charles R. Hyneman, surrebuttal testimony, p. 28.
[76] Ex. 425, OPC witness Charles R. Hyneman, surrebuttal testimony, Schedule CRH-S-7.

information in many responses to be confidential without explaining why it was confidential.[77] When OPC raised concerns with the sufficiency of Spire Missouri's responses to certain of OPC's data requests in anticipation of discovery conferences, Spire Missouri represented that it would supplement its responses; however, Spire Missouri either did not supplement its responses or, as supplemented, the responses were still insufficient.[78] In other instances, Spire Missouri's incomplete and incorrect responses to discovery became evident only after Spire Missouri witnesses prefiled their testimony, which testimony illustrated contradictions in Spire Missouri's responses to OPC discovery as well as inconsistencies in the testimonies of Spire Missouri's witnesses,[79] effectively undermining the integrity of the processes in Laclede to resolve discovery concerns in the course of this rate case.[80]

Despite this Laclede of transparency, Ms. Azad was able to identify Laclede's failure to include many entities in allocations calculations, and improper application of the company-wide three-factor formula which resulted in over-allocation of costs to Spire Missouri and, thus, Laclede and MGE retail customers.[81]

In addition, it appears Spire's management employees may not understand what transactions are subject to the Commission's affiliate transactions rule 4 CSR 240-40.015. Rule 4 CSR 240-40.015(1)(B), with exceptions inapplicable here, defines affiliate transaction as follows:

> Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service,

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[77] Ex. 400, OPC witness Ara Azad, direct testimony, pp.18, 46-48.
[78] Ex. 400, OPC witness Ara Azad, direct testimony, pp. 31. Ex. 426, OPC witness Azad surrebuttal testimony Attachment AA-S-6.
[79] Tr. 19:1832-38.
[80] OPC witness Ara Azad, Tr. 19:1978 and 19:2038-2039; Ex. 400, OPC witness Ara Azad direct testimony, pp. 46-48; Ex 426, OPC witness Ara Azad surrebuttal testimony, pp. 21-22 and Attachments AA-S-5 and AA-S-6; and OPC witness Charles R. Hyneman, Tr. 14:593-595.
[81] Ex. 400, OPC witness Ara Azad, direct testimony, p. 25. Ex. 426, OPC witness Ara Azad, surrebuttal testimony, pp. 17. Tr. 19:1954-1956.

> between a regulated gas corporation and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated gas corporation and the regulated business operations of a gas corporation.

As OPC witness Charles R. Hyneman pointed out in his surrebuttal testimony, Laclede witness Glenn W. Buck testified that Laclede Insurance Risk Services, Inc. (LIRS, Inc.) does not transact business with either Laclede n/k/a Spire Missouri East or MGE, n/k/a Spire Missouri West[82]; however, this is in conflict with Spire's 2016 10-K annual report filed at the SEC that LIRS, Inc. provides risk management services to Laclede Gas, n/k/a Spire Missouri.[83] While Mr. Buck provides testimony that "LIRS, Inc. does not transact business with either Laclede or MGE" literally may be true in that neither Laclede nor MGE (Spire Missouri) may directly transact with Laclede Insurance Risk Services, Inc., Mr. Buck also testifies, "LIRS Inc.] is an affiliated company owned by Spire Inc. and provides reinsurance services to the organization's insurance providers."[84] Moreover, in its 2016 10-K annual report Spire states, "Intersegment transactions include . . . risk management services provided by Laclede Insurance Risk Services, Inc. to Laclede Gas."[85] Because LIRS, Inc., engages in transactions with the purpose of affecting Spire Missouri's insurance costs, it is still within the scope of the Commission applicable affiliate transactions rule even if LIRS, Inc.'s transactions with Spire Missouri are indirect.

The most effective course of action to address the foregoing issues is by an independent, third-party external audit of Spire Missouri's affiliate transactions and shared services, as OPC witness Azad recommends.[86] As she testifies, such audits are performed throughout the country, both routinely and as a result of expert findings and recommendations such as those she makes in

[82] Ex. 46, Spire Missouri witness Buck rebuttal testimony, p. 23.
[83] Ex. 425, OPC witness Charles R. Hyneman, surrebuttal testimony, pp. 26-27.
[84] Ex. 46, Spire Missouri witness Buck rebuttal testimony, p. 23.
[85] Ex. 425, OPC witness Charles R. Hyneman, surrebuttal testimony, p. 27.
[86] Ex. 400, OPC witness Azad direct testimony, pp. 5-7.

this rate case.[87] As OPC witness Azad testified, in 2010 the New York Public Service Commission initiated a cost allocations review of National Grid that identified $24.75 million in over-charges that were then credited back to New York ratepayers.[88] It is imperative that the Commission consider the potential benefits of such an audit as well as the potential detriments if it is not performed.[89]

Because of Spire Missouri's continuing refusal to be transparent and the Laclede of resources of others to compel transparency, the Commission should order Spire Missouri to retain an auditor selected jointly by Commission Staff and Public Counsel. This independent auditor should assess the adequacy of Spire Missouri's processes and internal controls for affiliate transactions, examine the impact of affiliate transactions and shared services charges on Laclede and MGE, and recommend provisions to include in Spire Missouri's cost allocation manual and for employee implementation of the manual, particularly for costs allocated to Missouri for recovery from Missouri consumers.

iii. How should the Commission account for shared services?

The Commission should reject Spire Missouri's claim that the historical downward trend in Spire Shared Services, Inc. costs ends in 2017[90] and adopt the Public Counsel's adjustments to the test year levels of annual operations and maintenance expenses of Spire Missouri, Inc.'s gas utility operating divisions LACLEDE and MGE by $2.1 million and $922,000, respectively, for services their affiliate Spire Shared Services provided. The Public Counsel's adjustments are normalization adjustments to 2016 test year expenses based on the known and measurable historical downward cost trend for those services that Spire witness Flaherty identifies in his direct

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[87] Ex. 426, OPC witness Azad surrebuttal testimony, p. 20.
[88] Ex. 400, OPC witness Azad direct testimony, p. 20.
[89] OPC witness Azad, Tr. 19; 1956.
[90] Ex. 47, Spire Missouri witness Flaherty rebuttal testimony, pp. 40-42.

testimony.[91] They are not based on costs outside of the test year, and they are matched with the other costs and revenues in the test year.

Starting on page sixty of his direct testimony, Mr. Flaherty identifies sixteen categories of operations and maintenance services which Spire Shared Services, Inc. provides to Spire Missouri, Inc. Mr. Flaherty presents his trend analysis of how the aggregate costs of those services allocated to Spire Missouri, Inc.'s operating divisions—Laclede and MGE—changed during the period 2013-2016, a downward trend of 1.4% annually in nominal dollars.[92]

One of the sixteen categories Mr. Flaherty identifies is Information Technology Services, which he identifies as one of the categories having "the biggest drop in spend."[93] He attributes merger synergies in the Human Resources and Information Technology Services categories and the consolidation of functions into Spire Shared Services[94] to be the primary sources of the downward cost trend.

Mr. Flaherty acknowledges future merger synergy savings when he states that costs which now are directly charged will be allocated after Information Technology systems in Alabama and Mississippi are integrated when he states "[i]n Alabama the functions are performed primarily for the benefit of one company [Alagasco] and therefore are direct charged, although this trend will change as the company integrates Mobile and Willmut and combines systems on one platform."[95]

Like transitioning the information technology systems used for Mobile Gas and Willmut to those used for Alagasco, Spire plans by September of 2021[96] to transition the Alagasco systems to the information technology systems it fully implemented for Laclede in 2013 and for MGE in

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[91] Ex. 400, OPC witness Azad direct testimony, pp. 43-44; Ex 426, OPC witness Azad surrebuttal testimony, pp. 5-10; Ex. 46, Spire Missouri witness Flaherty direct testimony, pp. 60-72.
[92] Ex. 46, Spire Missouri witness Flaherty direct testimony, pp. 60 et seq., in particular p. 69.
[93] *Id*. at pp. 70-71.
[94] *Id*. at p. 72.
[95] *Id*. at p. 78.
[96] OPC witness Azad, Tr. 19; 2025-26; Spire Missouri witness Hyman, Tr. 20: 2185-86.

2015[97] so that all of Spire's state-regulated gas distribution systems will be served by common information technology systems. Due to the upcoming transition of Spire's information systems to a single platform, as well as other merger synergies described in OPC witness Azad's surrebuttal testimony,[98] Spire Shared Services, Inc. costs to Laclede and MGE will decline.

Spire Shared Services, Inc.'s operations and maintenance expense billings to Laclede and MGE aggregated to $213.2 million for 2016.[99] Multiplying $213.2 million by 1.4% yields $2.98 million When allocated to Laclede and MGE based on their relative proportions of allocated shared services and direct charges in 2016, 69% and 31%, respectively,[100] the results are reductions of $2.1 million and $922,000 to the operations and maintenance expenses included in the respective costs of service for Laclede and MGE.[101] The Commission should make these reductions when determining the respective costs of service of Laclede and MGE.

B. Gas Inventory Carrying Charges

i. Should Laclede's natural gas and propane inventory carrying costs be recovered through rate base inclusion, as currently is the case with MGE, or recovered through the PGA/ACA process?

The Commission should order Laclede to continue to recover natural gas and propane inventory carrying cost through the PGA/ACA process. Such an order would be consistent with Laclede's historic practice since 2005 during which time Laclede was the largest investor-owned gas utility in Missouri.[102] Because MGE and Laclede have combined to become the largest gas utility corporation in Missouri, it would be consistent to continue to order the leading Missouri gas corporation to continue to recover natural gas and propane inventory carrying costs through the

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[97] Company witness Hyman Tr. 20: 2184-85.
[98] Ex 426, OPC witness Azad surrebuttal testimony, pp. 8-10.
[99] Ex. 46, Company witness Flaherty direct testimony, Schedule - TJF – D2, pp. 109, 110, 133.
[100] Ex. 400, OPC witness Azad direct testimony, p. 43; Ex. 46, Spire Missouri witness Flaherty direct testimony, p. 85, Figure IX-6.
[101] Ex 426, OPC witness Azad surrebuttal testimony, p. 10.
[102] Tr. Vol 18, p. 1428: 5.

PGA/ACA process.[103] As such, and for other reasons, the Commission should also order MGE to recover natural gas and propane inventory carrying cost through the PGA/ACA process.

First, OPC's recommendation is supported by the same reasoning Mr. Pendergast presented in GR-2005-0284, which was included in OPC's testimony.[104] During Spire's opening statement of this issue of the evidentiary hearing on December 12, 2017, Chairman Hall asked Mr. Pendergast "what was the argument that you made in 2005 that you were so persuasive in?"[105] On September 26, 2005, Mr. Pendergast stated:

> "And once again, one of the reasons for [obtaining recovery through the PGA], from our perspective, is that you will go ahead and know what those costs are. You will not be charging more or less than what they are, and [natural gas inventory carrying costs are] about as intricately related to gas costs as they're already recovered through the PGA, as just about anything else could be."[106]

OPC witness Mr. Charles Hyneman agrees with this reasoning, which supports his testimony and OPC's recommendation. Furthermore, "all the detriments of not including inventory carrying costs in the PGA are also as applicable to MGE as they are to Laclede."[107]

Second, because the Company utilizes short-term debt to finance natural gas and propane inventories, Laclede's existing PGA/ACA approach is consistent with the financing actually utilized. Staff witness David Sommerer explains that Staff's rate base treatment recommendation is conditioned upon the Commission granting some level of short-term debt in the companies' capital structure.[108] Therefore, OPC's approach and Staff's approach are more in harmony with one another than with the Company's approach because both OPC and Staff recognize the need

[103] *Id.*
[104] Ex 410 Rebuttal Testimony of Charles Hyneman, Pg. 15, Line 8 to Pg. 16, Line 3
[105] Tr. Vol. 18, p. 1426: 6-7.
[106] Ex.425, OPC Rebuttal Testimony of Charles Hyneman, p.: 8 –p.16:3 (quoting GR 2005-0284, In the Matter of Laclede Gas Company's Tariff to Revise Natural Gas Rate Schedules Stipulation & Agreement Hearing, September 26, 2005, Tr., pp. 107-108).
[107] Ex. 425 OPC Surrebuttal Testimony of Charles Hyneman, p.p. 21: 1-11.
[108] Ex.259, Staff Surrebuttal Testimony of David Sommerer, p 5: 8-14.

for the Commission to give consideration to the way in which the Company finances its inventories. Related to Mr. Sommerer's understanding of the financing of natural gas inventories, he correctly notes that Laclede and MGE finance gas inventories with short-term debt, and it has done so for many years.[109] Staff's recommendation is that the "rate impact of inclusion of gas inventories in rate base without an offset for short term debt would create a detriment if not offset by some other directly quantifiable ratepayer benefit that is directly attributable to addressing the rate impact of including gas inventory in rate base."[110] If the Commission does not account for this offset, the result will be substantial harm to ratepayers and a windfall for Laclede's shareholders.

Third, the qualifications of the witnesses should go to the weight of their opinion. In addition to OPC and Staff having an opinion that is more in harmony with one another, OPC witness Mr. Charles Hyneman and Staff witness Mr. David Sommerer are both certified public accountants whereas Laclede / MGE witnesses Mr. Scott Weitzel and Mr. Eric Lobser do not hold that qualification.[111] Mr. Weitzel does not hold himself out as an accountant or a capital structure expert and does not have knowledge on the accounting treatment of whether gas inventories are a short-term or long-term asset beyond what appeared on a schedule of another witness.[112]

Finally, and as mentioned previously, the consequence of giving Laclede and MGE the full weighted average of cost of capital would cause an unjust order resulting in harm to ratepayers. The difference between OPC's proposal and the Company's proposal would be about $8 million

[109] *Id.* p. 3:20 - p. 5:14, and Tr. p. 1497: 10-17
[110] *Id.* p. 5:8-14; also see Tr. Vol. 18, p. 1498: 1-13.
[111] Ex. 403, direct testimony of OPC witness Charles Hyneman, p. 1: 15-16; Staff Direct Class Cost of Service Report, Appendix 1, p. 25; Ex. 8 direct testimony of Laclede witness. Eric Lobser; Ex. 15, direct testimony of Laclede witness Scott Weitzel; and Tr. p. 1445:6-7 ("I'm not an accountant and I'm not our capital structure expert.")
[112] Tr. p. 1445: 6-7 ("I'm not an accountant and I'm not our capital structure expert."); *see also* Tr. p. 1444, (" Do you know how [gas inventories are] classified for accounting purposes on the books and records? [answer:] I am not a CPA and I don't know the accounting treatment of those assets."); see Tr. p. 1455:9-10 (by Mr. Lobser:" on an accounting basis, it would be a short-term asset").

for Laclede and $3.5 million for MGE.[113] It could mistakenly be inferred from Company witness Weitzel's testimony that he incorrectly believes that OPC's numbers are overstated, presumably because MGE already receives a weighted average cost of capital on its natural gas and propane inventories through rates. OPC has shown the difference between its recommendation and the recommendations of the parties utilizing various rates of returns, which shows as much as an $11,377,256 difference.[114] Indeed, this number is accurate because OPC recommends discontinuing the windfall profits currently being received by MGE shareholders on the carrying costs of natural gas and propane inventories.

Also, Staff counsel Mr. Jeffrey Keevil correctly stated on the record that the calculations on OPC's exhibit "already built into [OPC's exhibit]" the net between the short-term debt recovery and the weighted average cost of capital recovery on natural gas and propane inventories. The Commission should be aware of the magnitude of the windfall to shareholders in determining this issue and others.

For these reasons, the Commission should order Laclede and MGE to recover natural gas and propane inventory carrying cost through the PGA/ACA process.

C. Credit Card Processing Fees

i. Should an amount be included in Laclede's base rates to account for fees incurred when customers pay by credit card, in the same manner fees are currently included in MGE's base rates?

Neither Staff, MGE, nor Laclede have provided evidence this type of charge does not result in a discriminatory rate, wherein a certain class of customer using a specific method of payment receive the benefit of subsidized fees from all ratepayers. In her rebuttal testimony in this case,

[113] OPC Exhibit 429 ; *see also* Tr. p. 1441: 1-9 (Staff counsel Mr. Keevil clarifies that the exhibit shows a net number); also see Surrebuttal Testimony of Charles Hyneman, Pg. 21, Lines 14-20.
[114] Ex. 429 Chart prepared by Public Counsel.

Staff witness Ms. Dietrich noted that "Staff Counsel . . . advises that . . . Missouri law forbids the preferential subsidization of certain ratepayers at the expense of all other ratepayers; therefore, it would be unlawfully discriminatory and preferential to require all ratepayers to subsidize"[115] the minority of customers who use credit cards to pay their utility bills. Laclede, MGE and Staff propose to socialize credit card fees to all customers.

OPC opposes socialization of credit-card fees for both companies. Socialization of credit-card fees means all customers will pay for these fees, even though only some customers actually pay their bill using this method.[116] To state it another way, Laclede and MGE propose to require all of their customers to pay the credit-card fees instead of the limited number of customers who pay by credit card paying the fee.[117]

There is no record evidence that all ratepayers benefit from subsidizing credit card fees for the 30% of LACLEDE's customers who use credit cards to pay their bills. In fact, in his testimony Company witness Michael Noack admits use of credit cards reduces the Companies' exposure to the risk of bad debt.[118] At the least, Laclede should have proposed a reduction in bad debt expense, or uncollectibles, which it did not.[119] In his colloquy with Chairman Hall, Mr. Noack admitted the advantages to MGE. When customers pay by credit card, "[w]e get the cash quicker.[120] Probably the debt goes to the credit card company as opposed – we wouldn't have to deal with bad checks."[121] When Chairman Hall asked if there was a "logical reason payment by credit card would decrease the likelihood of uncollectibles[,]" Mr. Noack responded: "Probably because, especially if someone's paying with, for example, a prepaid debit card, that money's on the card,

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[115] Ex. 213, Staff witness Natelle Dietrich, Rebuttal Testimony, p. 3:8-12.
[116] Ex. 409, Public Counsel witness Amanda Conner, Rebuttal Testimony p. 3:20 – p. 4: 1-35.
[117] Ex. 409, Public Counsel witness Amanda Conner, Rebuttal Testimony p. 3:5-19.

[119] Tr. Vol 15, 1023: 17-20.
[120] Ex. 409, Public Counsel witness Amanda Conner, Rebuttal Testimony p. 4:1-35.
[121] *Id.*

and if it gets paid to us, we're going to get that money, where if they pay by check, it could be a bad check and, you know, it gets stopped and we don't get that money. So yes, if it gets paid with a credit card, I believe we'll get that money. [122] The Company has not done a study to indicate if credit card payments do, in fact, reduce bad debt, which could benefit all customers.[123]

Without Laclede and Staff providing evidence that such a change will result in ratepayer benefits, OPC does not support all ratepayers subsidizing the limited number of ratepayers who choose to pay their utility bill with a credit card. There has been no evidence put forth in this case to show any benefit from increasing cost of service in order for a limited number of ratepayers to pay their utility bill using a credit card. Since use of credit cards reduces LACLEDE costs, and risks, either its shareholders or its credit-card using ratepayers should bear that expense.

D. Trackers

i. Should Laclede and MGE be permitted to implement an environmental tracker?

Trackers are for should be considered on a case by case basis to allow the Commission to take into account unusual conditions, such as high volatility of costs, costs for which there is no historical data, or for uncertain level of costs imposed on utilities by changes to laws or regulations. The Commission has decided that the "use of trackers should be limited because they violate the matching principle, tend to unreasonably skew ratemaking results, and dull the incentives a utility has to operate efficiently and productively under the rate regulation approach employed in Missouri."[124] Neither Laclede nor MGE has incurred any environmental costs and there is no

[122] *Id.*
[123] Tr. Vol 16 p. 1026: 17-22.
[124] *Kansas City Power & Light Co.'s Request v. Mo. Pub. Serv. Comm'n*, 509 S.W.3d 757, 769 (Mo. App. W.D 2016).

evidence Laclede and MGE will incur any such costs in the near future. Therefore, the Commission should not grant the Companies' request for an environmental tracker.

E. Surveillance

i. Should Laclede and MGE provide surveillance data to the Commission and Public Counsel?

The Commission should order the Companies to provide Staff and OPC with surveillance information a separate template, as suggested by Staff, should be ordered to be used by Laclede and MGE. Surveillance should be provided separately for each month. The Company should be ordered to provide Staff and OPC with electronic copies of the Company's General Ledger and CC&B subledger on an annual basis, within 30 days of the close of the Company's fiscal year. Staff and OPC should be allowed to reserve the right to request copies of the general ledger and CC&B subledger on a more frequent basis than annually if further support of the surveillance template is needed. Such information should be ordered to be considered confidential and governed by all statutory provisions or Commission rules governing Staff and OPC's use of such confidential information.

V. Revenue Stabilization Mechanism

i. Should a Revenue Stabilization Mechanism or other rate adjustment mechanism be implemented for the Residential and SGS classes for MGE and Laclede? If so, how should it be designed and should an adjustment cap be applied to such a mechanism?

No. While Missouri statutes have permitted this type of mechanism, Laclede has failed to meet its burden to prove that its revenue stabilization mechanism proposal is consistent with the statute authorizing such mechanisms. Laclede's and MGE's proposed revenue stabilization mechanisms allow the company to adjust for changes beyond those authorized by §386.266.3, RSMo.

Changes authorized by §386.266.3, RSMo are:

> Subject to the requirements of this section, any gas corporation may make an application to the commission to approve rate schedules authorizing periodic rate adjustments outside of general rate proceedings to reflect the nongas revenue effects of increases or decreases in residential and commercial customer usage due to variations in either weather, conservation, or both.

As stated in the surrebuttal testimony of OPC witness Marke: "The current regulatory environment does not justify the present adoption of this regulatory tool. . . . To the extent that decoupling [reduces] the utility's risk of revenue variability or volatility (which is the stated goal of the [Companies'] proposal) decoupling will result in a risk transfer to consumers" [whose rates increase between rate cases without Commission consideration of all relevant factors.][125]

OPC opposes Commission adoption of an RSM because:

> It further distorts the free market proxy that regulation is supposed to substitute for by shifting risk to captive ratepayers away from shareholders by ensuring recovery of the Company's profits irrespective of market conditions or inefficient utility behavior. For a gas company, the risk exposure to shareholders profits are, in part, present due to weather volatility, fluctuations in the economy during periods of contraction (recessions) or the loss of customers. A decoupling mechanism effectively eliminates those risks, and if ordered, should be married to an explicit reduction in reward (i.e., a lower return on equity). [126]

Importantly, the statute specifically recognizes adoption of an RSM mechanism changes the business risk of the corporation, which the Commission should take into account:

> The commission may take into account any change in business risk to the corporation resulting from implementation of the adjustment mechanism in setting the corporation's allowed return in any rate proceeding, in addition to any other changes in business risk experienced by the corporation.

Section 386.266.7 RSMo (2016)

[125] Ex. 420, OPC witness Geoff Marke Surrebuttal, p. 11:19 - p. 12: 1-6.
[126] Ex. 421, OPC witness Geoff Marke, Rebuttal Testimony, p. 8, 6-24.

In light of this statutory provision, Dr. Marke urges that: "[t]his transfer of risk should also explicitly recognize this reality in a reduction to the allowable return on equity (utility profit)."[127] Utility ratepayers typically are captive with regard to many costs and risks, and must rely on regulators to protect their interests. Utility managers have more capacity to identify, understand, and manage various types of risk than all but the most sophisticated ratepayers.

Economic regulation and regulatory risk substitute for competition and competitive risk.[128] Cost-recovery and revenue-assurance mechanisms shift risk between utility investors and utility ratepayers and thus affect the utility's overall cost of capital.[129]

In testimony, Dr. Marke and DE witness Martin Hyman note the Company already has numerous company-friendly revenue stabilization mechanisms.[130] Those include a PGA and ACA, an ISRS (infrastructure system replacement surcharge), historically-favorable rate design, and here the question is: does the company need another revenue stabilization mechanism?

The answer is "no." OPC and Staff testify the proposed RSM is not only unnecessary, it is unlawful.[131] In response to Mr. Thompson's question, "[D]o you agree with the testimony that Mr. Stahlman gave that the proposed RSM is not, in fact, compliant with the statute that authorizes it?" Dr. Marke answered: "I would agree with that."[132] Public Counsel explains that the proposed RSM is unlawful because it may capture customer usage variability that is not caused by weather or conservation. Tr. Vol 21 p. 2472:14-17. As an example of customer usage declining, Dr. Marke explained that a recession in the state of Maine caused customers to respond to continual price increases by reducing usage. "We've thrown out the term 'conservation' a lot in this -- in t this

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[127] Ex. 421, p. 12:1-6.
[128] Ex. 421, GM-4, p. 60.
[129] *Id.*
[130] Ex. 415, Rebuttal Testimony, OPC witness Geoff Marke, p. 5:8-22. Ex. 421, Schedule 2, p. 1.
[131] Tr. Vol 21 p. 2472:9-13.
[132] Tr. Vol 21 p. 2472:9-13.

whole discussion. What we haven't heard is the word 'depravation' and I would argue that depravation, conservation, and efficiency can all result in less therms [customer usage], but how you get there matters."[133] Laclede counsel cut off Dr. Marke's answer regarding a definition of deprivation.[134] The Google definition of deprivation, however, is "the damaging of material benefits considered to be basic necessities in a society."[135]

At hearing Dr. Marke further testified that Public Counsel's "biggest concern" "is the actual design of the RSM the Company has proposed."[136] In addition to average use due to rate switching by commercial customers, being an issue, as described by Mr. Stahlman, Public Counsel is also concerned with the potential of "sixty-four (64) changes to the bill over the course of . . . a four-year period, that customers would be exposed to."[137] Not only is this confusing to customers it is likely to enrage them.

Staff witness Stahlman also testifies that the Companies' proposal goes beyond weather mitigation and would impact other matters, fuel switching, rate switching, new customers with non-average use. "There are other things that can change that cause an average use change in overall customers. I mentioned specifically rate switching. One of the larger concerns that's in the testimony of Ms. Kliethermes is that the -- there's a lot of SGS customers currently that should be in a different rate category, and that moving – these customers, they're generally higher than average usage customers. So, if they just switched to their proper rate, that would cause the average of the current SGS class to go down, and that would lead to an adjustment that Laclede would be able to recover extra [revenue] without any change in usage."[138]

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133 Tr. Vol 21 p. 2472:24 – 2473:1-19.
134 Tr. Vol 21 p. 2473:15 - 2474:7.
135 https://www.google.com/search?safe=active&q=definition+deprivation&spell
136 Tr. Vol 21 p. 2468:17-22.
137 Tr. Vol 21, p 2469:17-22.
138 Tr. Vol 21, p. 2420:1-14.

In answer to Chairman Hall's question: The concern that you raised that I guess it was -- it was raised by Ms. Kliethermes specifically, but you, you echoed it, concerning rate switching as, as being a factor that could cause an upward adjustment in the RSM without an actual decrease in consumption; is that correct? Mr. Stahlman answered: "Correct."[139]

The Commission should not grant the Companies' requested tariff for an RSM. Not only is it unlawfully broad, the Companies already have numerous revenue stabilization mechanisms that allow the Companies to raise rates between rate cases including ISRS. If the Commission adopts any RSM provision in this case, the Commission should take into account the change in business risk to the corporation . . . in setting the corporations allowed return in any rate proceeding" in accord with §386.266.7 RSMO (2016).[140]

ii. Reflective of the answer to part i, what should the Residential customer charge be for Laclede and MGE, and what should the transition rates be set at until October 1, 2018?

If the Commission elects to adopt a decoupling mechanism, OPC recommends a residential $14 customer charge. If no decoupling mechanism is adopted OPC recommends that the Laclede residential customer charge be set at $22 and MGE at $20.

VI. Pensions and OPEBs

A. What is the appropriate amount of pension expense to include in base rates?

The Commission should consider Mr. Pitts' recommendation to order a strategic financing review for the companies to consider options such as borrow-to-fund strategies that take advantage of low interest rates, enabling Laclede to de-risk more rapidly.[141] Implementation of this recommendation would change the appropriate level of pension expense to include in base

[139] Tr. Vol 21, p. 2426: 18-25.
[140] Ex. 415, rebuttal testimony OPC witness Marke, p. 8:16-24.
[141] Ex. 408 direct testimony of OPC witness David Pitts, p. 17: 11-13

rates because it would allow for Laclede to consider borrow-to-fund strategies. Mr. Pitts has included whitepapers by Aon Hewitt on how companies have implemented borrow to fund strategies.[142] Related to his recommendation, Mr. Pitts testifies about the events surrounding the financial crisis, and he explains that ratepayers were subject to massive loses dramatically reducing pension asset value.[143] "Companies were in a position to borrow cash (at historically low interest rates), and then immediately fund the trust back up (covering the losses they created)."[144] Such a strategic review is related to and complimentary with this case, and it would be appropriate given the concerning size of the underfunded pension trust and prepaid pension asset.[145] Mr. Pitts has similarly recommended that the Commission order an OPEB benefit review to ensure Laclede benefits are not excessive because the amount of benefits being provided at Laclede are about 10 times as "rich" as benefits being provided at MGE.[146]

Related to a strategic review, the Commission should consider setting pension expense at the level Staff recommends for MGE and should consider setting pension expense at the level Laclede recommends for Laclede. The testimony of OPC witness Mr. David Pitts suggests there could be benefits of increased plan funding at Laclede because they have large underfunded pension trusts. Mr. Pitts has significant pension and retiree medical valuation experience, and he is highly qualified.[147] One of the first things that Mr. Pitts noticed when he reviewed the Laclede pension is the fact that ratepayers currently have unfunded retirement obligations of $364 million: $157 owed to the Company, plus $207 owed to the plan trusts.[148] For that reason, it may

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[142] Ex. 408, *Id.* p. 17 and Attached "Pension Funding Strategy" whitepaper from Aon Hewitt.
[143] Ex. 408 *Id.* p. 15:7-14.
[144] Ex. 408, *Id.* p. 15: 7-14.
[145] Tr. Vol. 20, p. 2075:4 and 8-9 ("honestly, it's way too big… I believe [the magnitude] has been of some concern to all of the parties")
[146] Ex. 422, surrebuttal testimony of OPC witness Mr. David Pitts, p. Lines 8-11.
[147] Ex. 408, Direct Testimony of OPC witness David Pitts, p. 2: 3-22.
[148] Ex. 408, p. 12: 3-7.

be more appropriate to order pension expense at the level recommended by Laclede. Doing so, over time, would help reduce expensive Pension Benefit Guarantee Corporation ("PBGC") premiums that must be paid for underfunded pension plans and could result in savings to customers over time.[149] A strategic financing review could help determine whether it is more appropriate to implement a borrow-to-fund strategy and eliminate PBGC premiums in a more timely manner.

In addition to ordering a strategic financing review for Laclede's pensions, Mr. Pitts has similarly recommended that the Commission order an OPEB benefit review to ensure Laclede benefits are not excessive because the amount of benefits being provided at Laclede are about 10 times as "rich" as benefits being provided at MGE.[150]

The Commission should order these strategic financing review of pensions and OPEB benefits and create a scenario for LACLEDE and MGE to prudently work down LACLEDE's retirement obligations.

B. What is the appropriate amount of the Laclede and MGE pension assets?

OPC agrees with the calculation of the prepaid pension asset/liability as calculated by Staff with the large exception that the Laclede prepaid pension asset should be reduced by Laclede's contributions in excess of the ERISA minimums, which should not be included in rate base.

First, OPC agrees with Staff that the value of the prepaid pension asset should not include an amount from the 80s and early 90s for which Laclede already received a normalized pension expense.[151] OPC agrees with Staff's reasoning as to why disallowance is appropriate. As explained by Staff witness Mr. Young, in "every Laclede rate case since FAS 87 was used for

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[149] Ex. 408, 12:8-15 - p. 14:.2
[150] Ex. 422, Surrebuttal Testimony of OPC witness Pitts, p. 4:8-11.
[151] Ex. 231 Rebuttal Testimony of Staff witness Matthew Young, p. 9 -11.

ratemaking, Staff has adjusted Laclede's regulatory asset to remove the pre-1994 deferred costs to find an appropriate amount to include in rate base… [and] Staff's adjustment has been unopposed over the course of 20 years, [and] the recovery of this portion of Laclede's regulatory asset is unlikely."[152] There are approximately $29 million of deferred FAS 87 and FAS 88 costs, and these amounts were not and have not supported by Staff for ratemaking and for inclusion in rate base. OPC agrees, and the Commission should order accordingly.[153]

Second, OPC agrees with the Staff's calculation of MGE's prepaid pension liability of $28,440,981. Although OPC agrees with much of Staff's calculation of the Laclede prepaid pension asset, OPC has one rather large caveat, which is that the prior stipulation agreements require a further reduction in rate base beyond what Staff and the Company recommend. The prior stipulation allows two exceptions to recovery of contributions in excess of the ERISA minimums which include to avoid benefit restrictions or PBGC variable premiums.[154] These exceptions do not apply to a situation in which Laclede has contributed in excess of ERISA minimum premiums by overstating their ERISA minimums. The record reflects that the Commission should reduce the value of the prepaid pension asset by $54,062,166 from Staff's calculation.[155] OPC attempted to introduce an update to that number which would change the value of the reduction from approximately $54 million to approximately $34 million.[156] As had been noted in Mr. Pitts rebuttal testimony, "I am willing to revisit [the approximately $54 million reduction in rate base] recommended adjustment to the Laclede pension asset if the Company can provide supporting documentation."[157] The Company did not provide sufficient supporting

[152] Ex. 23, *Id.* pp. 10-11.
[153] Ex. 231, *Id*. p. 9:17.
[154] Tr. Vol. 20 p. 2096: 14-24.
[155] Ex. 413, rebuttal testimony of OPC witness Pitts, p. 4: 1-14.
[156] Tr. Vol. 20 p. 2152:12 – p. 2153: 19; Exhibit 435 (shows a $33,951,755 adjustment); and Rebuttal Testimony of David Pitts, p. 4, Lines 1-14.
[157] Ex. 413, rebuttal testimony OPC witness Pitts, p. 4:1-6.

documentation, and OPC found other documentation suggesting a reduction to OPC's calculation might be appropriate. Strangely, Laclede objected to the rosier reduction in rate base, and OPC argues the Commission incorrectly sustained their objection by relying solely on 4 CSR 240-2.130(7).[158] Throughout the hearing, many witnesses updated their calculations, and there was a separate true-up hearing in which many witnesses updated their testimony. Importantly, unlike some of the other witnesses' updates, OPC's updated calculation is the result of the Company's evasive and incomplete answer to OPC communications.[159] Rule 61 discovery violation sanctions include, but are not limited to, orders of contempt, orders striking testimony, or refusing the disobedient party from supporting or opposing claims.[160] OPC specifically directed the Commission's attention to other places in the rules which contemplate being able to update numbers, such as 4 CSR 240-2.110(8) and 4 CSR 240-2.130(10).[161] However, because the Commission ruled in favor of the Company, OPC will argue the higher reduction in rate base to the prepaid pension asset is what should be ordered because that is the information that exists in the record.

C. How should pension regulatory assets be amortized?

OPC recommends a 20-year amortization schedule in direct testimony to minimize the impact to ratepayers; however, OPC is flexible on the amortization schedule and has proposed ten years in our position statement as a showing of OPC's flexibility.[162] OPC is also open to an eight year amortization. With Laclede and MGE coming in for a rate case every four years with

[158] Tr. Vol. 20, p. 2162,: 4-12/
[159] Tr. Vol. 20, p 2164: 13-18.
[160] Missouri Rule of Civil Procedure 61 (d)(1)-(4).
[161] Tr. Vol. 20, p. 2172: 9-13.
[162] Ex. 408, direct testimony OPC witness Pitts, p. 17: 6-9.

the ISRS statute, ratepayers would have paid off the prepaid pension amortization balance by the time of their second rate case. For these reasons, OPC remains flexible on this issue.

D. What is the appropriate amount of SERP expense to include in base rates?

OPC recommends a normalized annual SERP payment of $24,097. OPC cannot agree to annualize lump sum payments as Staff and the Company recommend. OPC's position matches previous positions that Staff has taken in past rate cases, which is that lump sum payments are erratic, nonrecurring and difficult to predict; consequently, they're not known nor are they measurable. The known and measurable standard is a fundamental standard in ratemaking that has been applied by this Commission for many years, and it should continue to be utilized for this issue. [163]

OPC's position matches Staff's previous position taken in the KCPL 2012 rate case of ER-2012-0174.[164] OPC knows this because OPC witness Mr. Charles Hyneman was a member of Staff at this time and helped to sponsor this position. However, Staff has moved away from the known and measurable standard and has attempted to normalize an expense that is difficult to predict.[165] For example, as between this case in ER-2012-0174, Staff agreed to KCPL's proposal to amortize/annuitize each lump sum payment over a period of approximately 14 years and treated as if they were an annuity rather than a lump sum payment in ER-2014-0370.[166] Staff moved even further away from its position by failing to amortize or annuitize the SERP payments and has grouped lump sum payments with annuity payments. Staff, in this case, was persuaded by a change in company policy encouraging lump sum payments whereas OPC's position is supported by Mr. Hyneman lengthy experience in reviewing SERP payments by

[163] Ex. 425 Surrebuttal Testimony of OPC witness Hyneman, p. 33:15-19.
[164] *Id*. at p. 34: 1-14.
[165] *Id*. at p. 33: 17-19.
[166] *Id*. at Pg. 36:1-21.

KCPL, Aquila, Inc., KCPL-GMO, Ameren Missouri, MGE, Laclede and Empire District, and based on his review and previous audits. Mr. Hyneman estimates an average SERP annuity payment between $2,000 and $16,000.[167] That is consistent with Mr. Hyneman's average of $2,667 SERP payments in this case, and represents a normal expense for SERP recipients. OPC supports an on-going SERP cost of $24,097.[168]

E. Should SERP payments be capitalized to plant accounts?

No. FASB indicates that only pensions costs related to current construction projects can be capitalized to those projects while all other pension costs are to be charged to expense.[169] Staff nor the Company should capitalize a portion of SERP cash payments to retirees because OPC argues, consistent with FERC and GAAP, that these are costs that will not provide benefits to future periods.[170] Consequently, OPC would remove capitalized SERP costs during the test year, and OPC recommends an adjustment to remove $461,279 from plant-in-service.

Capitalization of any SERP payments or SERP accruals under any accounting method is inconsistent with the Commission's matching principle, sound ratemaking principles and current generally accepted accounting principles ("GAAP")

F. Should the prepaid pension asset be funded through the weighted cost of capital or long-term debt?

The Commission should order recovery of the prepaid pension asset in rate base at the long-term debt rate. Additionally, the Commission should order the same debt rate for MGE's prepaid liability.

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[167] *Id*. at 39.
[168] *Id*. at Pg. 38: 1-25.
[169] *Id*. at pp. 30-33.
[170] *Id*.

First, Mr. Pitts explains the primary reasons why a pension obligation, including a prepaid pension asset which is a pension obligation of Missouri ratepayers, is more in the nature of a long-term debt obligation. [171] Many practitioners refer to such obligations as bond-like or like an exchange. Moody's treats unfunded pension liabilities as corporate debt in its rating process.[172] For this reason, it is more appropriate to give recovery to the companies at the debt rate rather than the full weighted average cost of capital.

Secondly, this Commission should order a debt rate for similar reasons as the Colorado Commission, whom Mr. Pitts has testified before on a similar issue with similar facts. In Colorado, in Decision No. C16-0123, Proceeding No. 15 AL-0135G, the Colorado Commission found that a long-term debt rate was reasonable rather than the full weighted average cost of capital.[173] In that case, the utility argued that only allowing a debt rate would not fully compensate the utility for the equity capital it advanced in the form of prepayments to the pension trust. The OCC, which is the consumer advocate in Colorado, argued that because the company is essentially guaranteed timely and a whole recovery of costs, then the associated lower risk as supportive of a return less than the weighted average cost of capital.

Comparably, in Missouri, ratepayers would be essentially guaranteeing the company timely and whole recovery of costs through the current rate base recovery mechanism. Therefore, the lower associated risks should support a lower return. The Colorado Staff argued no rate of return would be a reasonable option, but if the Commission did award a return, that the rate of return be no greater than the return the gas utility had received for infrastructure investments. The Colorado commission found merit with Staff and the OCC's recommendation, and

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[171] Ex. 408, direct testimony OPC witness David Pitts, p. 6: 2-12.
[172] *Id.* p. 6: 6-7.
[173] Ex. 413 a*lso see* reference to this case in Rebuttal Testimony of David Pitts, Pg. 9, Lines 14-16.

considered a long-term debt rate proper. Likewise, this Commission should find that the associated risk of the pension obligations is similar to debt and match recovery accordingly.

Finally, for those companies that include prepaid pension assets in rate base, there has been a simultaneous source of risk-free profit to the Company- effectively, excess finance fees.[174] Prepaid pension assets are not used or useful in the delivery of utility service because they represent legacy debt for which services are already rendered, which is perhaps why some regulators do not believe the prepaid pension assets should receive rate base treatment and recovery.[175] In addition to having less risk, pensions are protected under ERISA through the PBGC, which provides protections up to specified maximums on qualified pension benefits in the event the plan sponsor is unable to meet its obligations.[176] For all of these reasons, OPC is recommending the Commission order the prepaid pension assets be assigned a long-term debt rate rather than the full weighted average cost of capital.

VII. Accumulated Deferred Income Taxes

A. What is the appropriate amount of income tax expense to include in base rates for Laclede and MGE?

In his opening statement Mr. Pendergast acknowledges that Spire Missouri expensed some items it formerly capitalized, and in doing so made errors which resulted in greater accumulated deferred income taxes than what Spire Missouri had included in its costs of service for Laclede and MGE. He related that, after OPC witness Charles R. Hyneman vigorously pursued the matter, Spire Missouri reviewed its work and, just before the evidentiary hearing in this case started, and agreed to a $100 million offset to its collective Laclede and MGE ratebase resulting in a $10 million reduction in its collective revenue requirements for Laclede and

[174] Ex. 422, surrebuttal testimony of OPC witness Pitts, p. 9, Lines 9-11.
[175] *Id*. at p. 9, Lines 12-13.
[176] Ex. 408, Direct Testimony OPC witness Pitts, p. 9: 1-2 and Footnote 7.

MGE.[177] However, there is still an income tax-related issue for the Commission to decide relating to deferred income taxes and income tax deductions taken that may later be disallowed.

On page 54 of its Report and Order in Case No. ER-2008-0318 the Commission describes deferred income taxes as follows:

> Deferred income taxes arise from temporary differences between book and tax treatment of an item of income or expense. Under well-established regulatory principles, deferred taxes are treated as a reduction to rate base so ratepayers do not pay a return on funds provided to the company at no cost. In that way, ratepayers are given the benefit of what is, in effect, an interest free loan from the government to the utility. In other words, ***the benefit the company receives from being able to keep money by delaying payment to the government*** is passed along to ratepayers. (Footnotes omitted, emphasis added).[178]

As the Commission correctly describes, deferred income taxes reflect interest free funds that a utility possesses until it pays its taxes. So long as the utility possesses these funds, the Commission should offset the utility's rate base by the amount of the funds. This offset prevents the utility from being paid a return on funds its investors do not supply.

OPC witness Charles R. Hyneman characterized deferred taxes similarly to the Commission as follows: "Deferred income taxes normally represent a prepayment of income taxes by ratepayers and, therefore, these deferred taxes are included in rate base as a credit or rate base offset. Deferred income taxes reflect the ratepayer prepayment of income taxes, which the utility will not actually have to pay until sometime in the future."[179]

The disputed accumulated deferred income tax ("ADIT") adjustments OPC witness Charles R. Hyneman made as a reduction to the ratebases of Laclede and MGE relate to Spire Missouri classifying a portion of its ADIT to be at risk of the IRS disallowing it. When the IRS

[177] Tr. 16:1064-66.
[178] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase Its Annual Revenues for Electric Service*, 18 Mo. P.S.C. 3d 306, 348, *Case No. ER-2008-0318, Report and Order, Decided January 27, 2009.*
[179] Ex. 425, OPC witness Charles R. Hyneman, surrebuttal testimony, p. 23-24.

and courts have not previously addressed the validity of a deduction that a taxpayer claims, it may be uncertain that, ultimately, the deduction will be allowed. For financial accounting purposes ("FIN 48"), the taxpayer's ADIT balance is reduced to reflect the uncertainty of the IRS, and courts, allowing the tax deductions and the potential for the eventual payment of additional tax in the future.[180] However, if the Commission recognizes this FIN 48 ADIT reduction for ratemaking purposes, the utility's rate base will be overstated. Here, this is due to the fact that Laclede and MGE continue to possess the funds associated with taking the tax deduction. The mere classification of the associated tax deduction as uncertain does not change the fact that Laclede and MGE possess funds supplied by ratepayers and, as a result, ratepayers should receive the benefit of an offset to the rate base.

Despite the foregoing, in Case No. ER-2008-0318 Union Electric Company claimed, and the Commission agreed, that the ADIT associated with such uncertain deductions should not be used to offset Union Electric Company's ratebase. On page 55 of its Report and Order in Case No. ER-2008-0318, the Commission stated the following: "Both ratepayers and shareholders benefit when AmerenUE takes an uncertain tax position with the IRS, because saving money on taxes benefits the company's bottom line and reduces the amount of expense the ratepayers must pay."[181]

However the Commission's ruling in that case provided to AmerenUE all of the benefits of AmerenUE taking the uncertain tax position until sometime in the future, after the allowance or disallowance of the deduction is finally determined. If the Commission were to follow that approach here, Laclede and MGE would enjoy the benefit of the additional cash flow from the

[180] Staff witness Lisa Ferguson, Tr. 16:1081.
[181] *In the Matter of Union Electric Company, d/b/a AmerenUE's Tariffs to Increase Its Annual Revenues for Electric Service*, 18 Mo. P.S.C. 3d 306, 348, *Case No. ER-2008-0318, Report and Order, Decided January 27, 2009.*

tax savings resulting from taking the uncertain tax position until some future date when that tax position is either allowed or disallowed, while Laclede's and MGE's ratepaying customers would receive no benefit.

Ultimately, through billed rates, ratepayers pay the taxes attributable to the regulated utility operations of a taxpayer. Unless the IRS, or courts, resolves uncertain tax positions in favor of the utility, there is no future tax benefit and, unless the Commission provides relief to ratepayers before the ruling, then those ratepayers never receive any benefit; instead they are harmed by providing cash without receiving any concomitant benefit. Utilities remain motivated to pursue uncertain tax positions, even if they are used to offset their ratebase, since, even if they ultimately lose the tax position, doing so improves their cash flow by delaying their tax payments.

If Spire Missouri ultimately does not prevail on Laclede and MGE's uncertain tax positions, when the disallowance is final and nonappealable, the tax associated with the disallowance plus the interest will be paid and the ADIT will be removed from the offset to Spire Missouri's ratebases for Laclede and MGE. OPC does not oppose addressing inclusion of this interest in a future rate case.

The regulatory treatment of the ADIT OPC proposes symmetrically recognizes the benefit to Spire Missouri of the additional cash flow provided to Laclede and MGE and the benefit to Laclede and MGE retail customers of the rate base offset. The collective amount of OPC's proposed offset to Spire Missouri's ratebases for Laclede and MGE is $54 million, which translates into approximately $5 million in aggregate revenue requirement.[182]

[182] OPC witness Charles R. Hyneman, Tr. 16:1088; Staff witness Lisa Ferguson, Tr. 16:1082.

VIII. Uncollectibles

A. What is the appropriate amount of bad debt to include in base rates?

OPC proposes the Commission order no change to Laclede's test year Uncollectible Accounts of $6,257,451 and MGE's test year amount of $1,755,577, for a combined $8,013,028 bad debt expense level.[183] These are the bad debt expense levels for the Company that were actually incurred over the most recent twelve months under the new revised bad debt expense accounting policy ending September 30, 2017. To consider an appropriate prospective bad debt rate to include in rate base, the Commission must determine whether to apply Staff and OPC's recommendation of the historic test year or the companies' proposal of a three-year average. Secondly, the Commission should determine whether to use figures reported in Account 144 "Accumulated Provision for Uncollectible Accounts – Credit" or Account 904 "Uncollectible Accounts" is the appropriate basis from which to base a bad debt expense level.

B. 12-month Actuals Are Appropriate to Estimate Uncollectibles Under New Write-Off Policies

OPC and Staff argue that the Commission estimate bad debt expense based on the most-current data that accounts for significant changes to Laclede's and MGE's write-off policies.[184] Initially the companies' argued for a three-year average of bad debt expense ending in August 2015.[185] On rebuttal, Company witness Krick testified the data up through September 6, 2017, results in a three- fiscal year average of $9.7 million for Laclede and $4.3 million for MGE.[186]

Company witness Timothy Krick stated, "In fiscal year 2016, the Company made a significant change to its write-off policy…[that] precludes a comparison of net write-off levels in

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[183] Ex. 403, direct testimony of OPC witness Charles Hyneman, p. 41.
[184] Ex 253, surrebuttal testimony Staff witness Amanda McMellan p. 2.
[185] Ex 23, direct testimony of Company witness Timothy Krick, p. 3.
[186] Ex 24, rebuttal testimony Krick, p. 9.

2016 to those experienced before 2016."[187] Witness Krick reiterated the point in discussing administrative efficiencies under the new policy, stating "the results in 2016 cannot reliably be compared to prior years."[188] OPC agrees. The substantial changes to the write-off policies for both Laclede and MGE will affect ongoing level of uncollectible expense. Therefore, OPC believes that the averages propounded by the Company that include write-off periods that predate the revised policy are an inappropriate basis and do not serve as an accurate basis to project future bad debt expense.

In part because OPC believes, as testified to by Company witness Krick, that the companies' policy revisions "will be less volatile and more reflective of bona fide bad debt by filtering out the effects of those customers who bounce back-and-forth between uncollectible and receivable."[189] Despite averments by the Company on the possibility of cuts to grant programs or energy assistance[190], the record does not have corroborating evidence to substantiate such speculation. To the contrary, OPC offered evidence proving authorization for LIHEAP funding in fiscal year 2018.[191] The reduced volatility of the policy revisions coupled with funding for existing assistance programs contradicts the Company's position, which seeks an inflated bad debt expense basis.

The record shows that the three year average sought to be included by the Company includes time periods that the Company has testified cannot provide an accurate comparison between the new and old write-off programs. Even Company questions its recommendation of a three-year average. Company witness Krick testifies that the companies' three-year average

[187] Ex 403, p 4.
[188] *Id.*, p. 5.
[189] Ex. 23, p. 5.
[190] *Id.*, p. 6.
[191] Ex. 428, p. 1.

recommendation is not "the best", opining that a five-year calculation as preferable.[192] Later Witness Krick offers the results of a two-year average as evidence purporting the adjustments to be within historical lines.[193] Both the five-year and two-year averages for Laclede would be approximately $1.4 million less than the companies' recommendation. The record does not reflect an increased demand on energy assistance or funding issues; therefore an inflated estimate of bad debt levels is not substantiated. OPC agrees with Staff that the appropriate measurement that should be applied in this situation is the relevant information available since implementation of the changes to their write-off policies.

C. Account 904 is the Appropriate Bad Debt Expense Basis

Commission Rule 4 CSR 240-40.040 directs every natural gas company to keep all accounts in conformity with Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. OPC's recommendation is based on data reported by the companies' accrued uncollectible designated in Account 904.[194] 18 CFR Part 201 states, "[t]his account [904 Uncollectible accounts] shall be charged with amounts sufficient to provide for losses from uncollectible utility revenues. Concurrent credits shall be made to account 144, Accumulated Provision for Uncollectible Accounts -- Credit. Losses from uncollectible accounts shall be charged to account 144." OPC believes it is reasonable that the account intended to charge with amounts sufficient to provide for losses is informative as to what losses may be incurred in the future.

Account 144, as defined by 18 CFR Part 201, includes, "amounts provided for losses on accounts receivable which may become uncollectible, and also with collections on accounts

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[192] Ex. 23, p.6.
[193] *Id.*
[194] Commission Rule 4 CSR 240-40.040.

previously charged hereto."[195] Account 144 by definition includes collections on accounts previously charged, meaning bad debt incurred under the previous policy is being carried forward and applied as if it is incurred under the new policy.

Staff recommends uncollectible expense to include in base rates is $7,318,951 for LGC and $3,501,893 for MGE. Staff and OPC argue in favor of the same principle that the companies' significant changes to their write-off policies renders previous years' data as an unreliable indictor of what levels of bad debt expense the companies' may expect moving forward. Staff and OPC differ on what account should be used to determine bad debt expense: Staff used Account 144 trued-up through September 30, 2017.[196] The difference in the account number equates to Staff's sum total recommendation being approximately $2.8 million higher than OPC's recommendation.

Should the Commission determine OPC's recommendation to apply Account 904 as the basis from which to set bad debt expense, OPC states that Staff's recommendation which applies a 12-month test year based on Account 144 is more representative of anticipated bad debt levels under the companies' new policy.

IX. Incentive Compensation for Employees

The Commission generally allows utility employee incentive compensation based on components or criteria that have some reasonable degree of measurability and a finding that the attainment of those criteria benefits customers and utility operations such as the ability of the utility to provide safe and adequate service at reasonable rates.

Consistent with this overall philosophy, this Commission has held over many years that earnings and equity-based incentive compensation provides not only zero ratepayer benefit but results in a ratepayer detriment and therefore should not be included in utility rates.

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[195] 18 CFR Part 201.

[196] Tr. p.993.

A. What is the appropriate amount of employee incentive compensation to include in base rates?

Public Counsel supports Staff's position on this issue. The portion of the union's team level incentive compensation that is not earnings-based is appropriate to include in rates.

B. What criteria should be applied to determine appropriate levels of employee incentive compensation?

Public Counsel supports Staff's position on this issue. Incentive compensation expense charged to ratepayers should produce a benefit to Missouri ratepayers, and incent employees to perform duties at a level above the minimum required.

C. Earnings Based Incentive Compensation – Should Laclede and MGE be permitted to include earnings based and/or equity based employee incentive compensation amounts in base rates?

No. The Commission has a clear and longstanding position against allowing such expenses in a utility cost of service. The basis of this positon is that these expenses are incurred for the sole benefit of utility shareholders and thus should be allocated to shareholders. Laclede has provided no evidence in this case on which the Commissions should even reconsider its ratemaking positon, let alone reverse its positon.

Earnings-based incentive compensation and equity-based compensation align the interest of employees with shareholder interest. The primary shareholder interest is shareholder wealth maximization, which is not a matter of ratepayers interest. Therefore, the costs associated with these compensations should be borne by the shareholders.

The financial portion of incentive compensation should be paid by shareholders as the Commission explained in its *Report and Order* in Case No. GR-2004-0209.

> The Commission agrees with Staff and Public Counsel that the financial incentive portions of the incentive compensation plan should not be recovered in rates. Those financial incentives seek to reward the company's employees for making their best efforts to improve the company's bottom line. Improvements

to the company's bottom line chiefly benefit the company's shareholders not its ratepayers. Indeed, some actions that might benefit a company's bottom line, such as a large rate increase, or the elimination of customer service personnel, might have an adverse effect on ratepayers.

If the company wants to have an incentive compensation plan that rewards its employees for achieving financial goals that chiefly benefit shareholders, it is welcome to do so. However, the shareholders that benefit from that plan should pay the cost of that plan. The portion of the incentive compensation plan relating to the company's financial goals will be excluded from the company's cost 28 of service revenue requirement.

D. Should Laclede and MGE be permitted to capitalize earnings based and equity-based employee incentive compensation amounts in base rates?

No. The Commission has a clear and longstanding position against allowing such expenses in a utility cost of service. The basis of this positon is that these expenses are incurred for the sole benefit of utility shareholders and thus should be allocated to shareholders meaning all capitalized amounts must be removed from rate base.

Laclede has not provided any evidence on which the Commissions could even reconsider its ratemaking positon to deny inclusion of these expenses. The Commission should not reverse its positon here. Consistent with the longstanding Commission position on this issue, no expense should be reflected in cost of service and no amount should be capitalized to plant in service.

D. To the extent the Commission declines to include employee incentive compensation in rates, what adjustment should be made to base salaries paid to employees?

Individual incentive compensation should be included assuming 100% achievement of the 2016 individual incentive compensation plan.

X. Transition Costs

A. Should LACLEDE be allowed to include synergies it claims resulted from the purchases of Alagasco and EnergySouth?

No. Public Counsel thinks it is audacious for Spire to ask for Missouri customers to pay higher rates so it can be rewarded for supposed synergies when there is no evidence to support the idea Missouri customers have benefitted in any way. Public Counsel supports Staff's treatment and adamantly opposes Mr. Lobser's request.[197]

Mr. Lobser provides three alternative options for the Commission to consider which are paraphrased as follows:

1. The Commission could deduct half of the transition costs from the Company's savings calculation incurred to make the acquisitions. Amortized over a five-year period this would represent a $2.35 million offset;
2. The Commission could allow the Company to retain, on a one-time basis, a 50% (or 25% minimum) percentage of the cost savings; or
3. The Commission could adjust the Company's Commission-approved ROE by 10 to 25 basis points upward.

OPC supports Staff's position. For that reason and others (to be described below), OPC rejects the three options put forward by Mr. Lobser. As a portion of Public Counsel's objection to these proposals Public Counsel notes: On June 16, 2016, OPC filed a motion asking the Commission to issue an order opening an investigatory docket and directing Staff to investigate the acquisition of Alagasco and EnergySouth.[198] The motion proposed that the Commission investigate whether the acquisition and proposed acquisition ("transactions") constituted a violation of a Commission order in that Spire failed to seek its prior approval for the transactions. In response to Public Counsel's June 16, 2016 *Motion to Open an Investigation*[199] on July 20,

[197] Ex. 7, Rebuttal Testimony of Company witness C. Eric Lobser, p. 28-30.
[198] Ex. 421. P.8:12-20.
[199] Public Counsel's *Motion to Open an Investigation*, GM-2016-0342.

2016, the Commission granted OPC's *Motion.*[200] The Commission granted the motion, and ordered the Staff to conduct the investigation and file a report setting forth the results of its investigation, including whether the transactions are within the Commission's jurisdiction. On September 1st, 2016 Staff filed its investigatory report with the following conclusion:

> **IV. CONCLUSIONS AND RECOMMENDATIONS**
>
> **A. *Conclusions:***
>
> The "not detrimental to the public interest" standard requires a cost-benefit analysis. Staff is not aware of any benefits that the transactions have or will confer on the Missouri ratepayers of Laclede and MGE; but has identified potential detriments. Those detriments include higher capital costs due to Spire's debt burden, taken on to fund its acquisitions, and costs improperly allocated to Spire's Missouri operating company.
>
> **B. *Recommendations:***
>
> The Alagasco acquisition is complete and cannot be undone; the EnergySouth acquisition is quite small. Therefore, Staff recommends that the best way to address the detriments it has identified is in the context of a general rate case for Laclede Gas Company. Additionally, Staff will pursue a complaint against Spire for its failure to seek prior approval from this Commission for the acquisitions of Alagasco and EnergySouth.[201]

OPC also appeals to the principle of "fairness," specifically, honoring the terms of the unanimous stipulation and agreement executed by the Company and approved by the Commission in GM-2001-342 which states:

> The Laclede Group, Inc. agrees that it will not, directly or indirectly, acquire or merge with or allow itself to be acquired by or merged with, a public utility or the affiliate of a public utility, where the affiliate has a controlling interest in a public utility . . . without first requesting and, if considered by the Commission, obtaining prior approval from the Commission and a finding that the transaction is not detrimental to the public, provided that for purposes of acquisitions by the Holding Company only, public utility shall mean a natural gas or electric public utility.

[200] Commission *Order Granting Motion to Open an Investigation and Directing Filing,* GM-2016-0342 issued July 20, 2016.
[201] Ex. 421, Surrebuttal Testimony of OPC witness Dr. Marke, P. 9:11 – p. 10: 15 and Attach. GM-4.

Additionally, OPC also appeals "from a public policy standpoint" and has included the entire 77-page Staff Investigation Report attached at GM-4 (see also GM-2 & GM-5 for additional supporting schedules) for the Commission's consideration. Parties, including OPC, entered into the unanimous stipulation and agreement in GM-2001-342 (see GM-6) in good faith that it would be honored and exercised. Staff's Investigation Report makes clear the Company has violated the terms and conditions and that these acquisitions are detrimental to the public. For example, regarding the impact to Missouri customers the Staff report states:

> Yes, it has depressed the credit rating of Laclede Gas and thus increased its cost of capital which is reflected in higher rates. Additionally, Staff is of the opinion that acquisition and integration costs have improperly been allocated to Laclede Gas. Staff is also of the opinion that improper affiliate transactions are occurring on an ongoing basis between Laclede Gas and Spire and Alagasco.[202]

Consequently Public Counsel opposes all three of Mr. Lobser's unabashed suggestions as to how the Commission should reward Spire when Spire ignored its commitments to this Commission. The Company should not be rewarded when it has denied the commitments it made to the parties in GM-2001-0342. Further the Company has failed to produce any cost-benefit analysis which is necessary to prove synergies. [203] There is no proof the cost outweighs any benefits. The "not detrimental to the public interest" standard requires a cost-benefit analysis. Staff is not aware of any benefits that the transactions have or will confer on the Missouri ratepayers of LACLEDE and MGE; but has identified potential detriments. Those detriments include higher capital costs due to Spire's debt burden, taken on to fund its acquisitions, and costs improperly allocated to Spire's Missouri operating company.[204] The Commission should deny Laclede's request to be rewarded for synergies it has not proven.

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[202] Ex. 421, Attach. GM-4 p. 53.
[203] *Id*. at 68-69
[204] Ex. 421, Attach. GM-4 p. 75.

XI. CHP (Combined Heat and Power)

A. Should Laclede and MGE implement a CHP pilot program as proposed by Division of Energy (DE)?

No. For many reasons the Commission should deny DE's CHP pilot program. First, CHP is a violation of the prohibited promotional practices rule and is a regressive subsidy for an already mature technology. "It is worth noting, as witness Epperson highlights in Table 1, page 6 of her direct testimony,[205] there are already twenty-three CHP installations in operation without the benefit of ratepayer subsidized funding. It appears the "pilot" case for CHP has already been made."[206]

OPC recommends the Commission reject DE's proposal as it relates to ratepayer-funded expenditures specific to the proposed CHP pilot program. OPC does, however, support DE's exploratory partnership with Spire to investigate future CHP summits to consider the relevance of CHP within the context of a regulated natural gas utility in the Midwest.[207]

Staff witness Claire Eubanks raises concerns about the Laclede of specificity and detail in DE's proposed CHP pilot program. Ms. Eubanks notes that critical factors are missing from the proposal including the Laclede of a specific time period for the term of the pilot project and, perhaps more importantly, the Laclede of metrics for evaluation of the success or failure of the project.[208] OPC has concerns that DE's proposal is still in the conceptual stages and that it lacks detail and any evaluation metrics. [209] Additionally Public Counsel observes that DE's tariff filing is not in compliance with Commission rule 4 CSR 240-3.255(2)(B)3. This rule generally requires

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[205] Ex.
[206] Ex. *Robinett Rebuttal* p. 2:16-18.
[207] Ex. Robinett Rebuttal. P. 1:18-23.
[208] Ex. Staff witness Eubanks Rebuttal Testimony p. 9:9-16.
[209] Ex. Surrebuttal Testimony of OPC witness John Robinett, p.3:1-8.

a tariff sheet filing that describes the details of the program, the evaluation plans for a pilot program or the results of the evaluation that show the program is cost-effective for the utility.

Staff also raises concern that the pilot program could adversely affect electric utilities' sales and revenues, when the electric utilities that are not interveners in this rate case.[210] Finally, Staff comments that the pilot may include prohibited promotional practices.[211]

The Commission's promotional practices rule is designed to prevent utility companies from giving customers "appliances or other forms of consideration . . . to incent customers to install [a particular] appliance" that uses electric or gas to encourage the customer to use more electricity or gas.212 Further DE's proposal is a load building program.213 In his surrebuttal, Mr. Robinett explains what constitutes load building. According to 4 CSR 240-14.010(6) definition of load building.

> (J) Load-building program means an organized promotional effort by a utility to persuade energy-related decision makers to choose the form of energy supplied by that utility instead of other forms of energy for the provision of energy service or <u>to persuade customers to increase their use of that utility's form of energy, either by substituting it for other forms of energy</u> or by increasing the level or variety of energy services used. This term is not intended to include the provision of technical or engineering assistance, information about filed rates and tariffs or other forms of routine customer service. (emphasis added).

The Commission should reject DE's proposal. In addition to DE's failure to provide necessary detail and evaluation measures and the fact the proposal is not cost effective, it is worth noting, as Ms. Epperson highlights in her direct testimony,214 there are already twenty-three CHP

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[210] *Id.* p. 8:3-13
[211] *Id.* p. 5:21-22 – p. 6:1-14.
[212] Ex. Surrebuttal testimony of OPC witness Lena Mantle, p. 7:5-15.
[213] Ex. Surrebuttal Testimony of OPC witness John Robinett, p.4:1-8.
[214] Ex. Direct testimony DE witness Jane Epperson p. 6, Table 1.

installations in operation in Missouri without the benefit of Laclede or MGE ratepayer subsidized funding.

XII. AMR Devices

Public Counsel will address all issues related to the AMR devices in its True Up brief.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Public Counsel requests the Commission to adopt the Public Counsel's position on each and every issue that was presented in this case.