

Exhibit No.: _____
Issue(s): Rebuttal Testimony of
Thomas Flaherty/
Rebuttal Testimony of Timothy Krick/
Rebuttal Testimony of Glenn Buck/
Rebuttal Testimony of Ryan Hyman
Witness/Type of Exhibit: Azad/Surrebuttal
Sponsoring Party: Public Counsel
Case No.: GR-2017-0215
GR-2017-0216

SURREBUTTAL TESTIMONY
OF
ARA AZAD

Submitted on Behalf of the Office of the Public Counsel

LACLEDE GAS COMPANY
MISSOURI GAS ENERGY

CASE NO. GR-2017-0215
CASE NO. GR-2017-0216

November 21, 2017

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

In the Matter of Laclede Gas Company's)
Request to Increase Its Revenues for Gas) Case No. GR-2017-0215
Service)

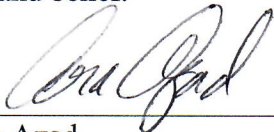
In the Matter of Laclede Gas Company)
d/b/a Missouri Gas Energy's Request to) Case No. GR-2017-0216
Increase Its Revenues for Gas Service)

AFFIDAVIT OF ARA AZAD

STATE OF KANSAS)
)
COUNTY OF JOHNSON) ss

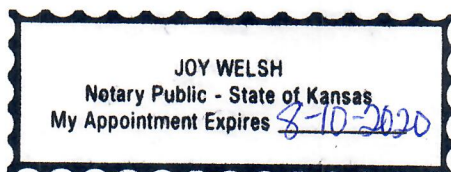
Ara Azad, of lawful age and being first duly sworn, deposes and states:

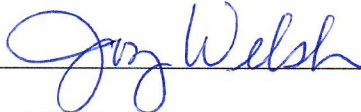
1. My name is Ara Azad. I am Managing Partner at AzP Consulting, LLC.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached affidavit are true and correct to the best of my knowledge and belief.



Ara Azad

Subscribed and sworn to me this 21st day of November 2017.





Notary Public

SURREBUTTAL TESTIMONY

OF

ARA AZAD

LACLEDE GAS COMPANY

MISSOURI GAS ENERGY

GR-2017-0215

GR-2017-0216

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1 **I. INTRODUCTION**

2 **Q. Please state your name, title and business address.**

3 A. My name is Ara Azad. I am Managing Partner of AzP Consulting, LLC (“AzP”), located
4 at 11614 Tomahawk Creek Parkway, Suite I, Leawood, Kansas 66211.

5 **Q. Are you the same Ara Azad who previously filed direct testimony in this proceeding?**

6 A. Yes, I previously submitted direct testimony on behalf of the Missouri Office of the Public
7 Counsel (“OPC”).

8 **Q. What party do you represent?**

9 A. I provide this surrebuttal testimony on behalf of the OPC.

10 **Q. Do you have any corrections to make to your direct testimony at this time?**

11 A. Yes. The title on the tables on pages 36 and 37 of my direct testimony should state
12 “Calendar Year” rather than “Fiscal Year.”

13 **II. PURPOSE OF TESTIMONY**

14 **Q. What is the purpose of your surrebuttal testimony?**

15 A. The purpose of my surrebuttal testimony is to respond to assertions made in the rebuttal
16 testimonies of Thomas Flaherty, Timothy Krick, Glenn Buck, and Ryan Hyman in response
17 to my direct testimony.

18 **III. RESPONSE TO PROPOSED ADJUSTMENTS**

19 **A. New Blue Allocation**

20 **Q. Please describe “New Blue.”**

21 A. New Blue is an enterprise management software system. Both Laclede Gas Company
22 (“LAC”) and Missouri Gas Energy (“MGE”) are seeking cost recovery in Case Nos. GR-
23 2017-0215 and GR-2017-0216, respectively.

1 **Q. Did MGE have plans to make investments for similar functionality in its information**
2 **technology system absent the merger with Laclede?**

3 A. No. Mr. Flaherty testified that MGE did *not* have “plans to conduct such investment for
4 similar functionality on its own.”¹

5 **Q. How did MGE’s costs change as a result of the post-merger integration of New Blue?**

6 A. As the table below illustrates, the net book value (“NBV”) of MGE’s information
7 management system (“IMS”) increased approximately tenfold from 2013 to 2016 as a
8 result of integration of the enterprise management system at MGE.

MGE Information Management System Costs				
	(A)			(B)
	2011	2012	2013	2016
Plant Balance	\$ 32,525,190	\$ 33,483,259	\$ 33,505,759	\$ 67,787,723
Reserve Balance	\$ 27,232,246	\$ 26,535,431	\$ 27,988,830	\$ 12,274,769
NBV	\$ 5,292,944	\$ 6,947,828	\$ 5,516,929	\$ 55,512,954

(A) Source: Response to Discovery OPC 7132

9 (B) Source: Response to Discovery, OPC 8504

10 **Q. In your direct testimony, what did you recommend for purposes of the costs related**
11 **to New Blue?**

12 A. As noted on page 44 of my direct testimony, costs of New Blue are currently not being
13 allocated over the entire enterprise. These costs are, instead, being allocated exclusively
14 to LAC and MGE. Furthermore, as discussed on page 45 of my direct testimony, Spire did
15 not perform a requisite study to assess the proper allocation of these costs. Given that New
16 Blue is an enterprise software system, I believed, and still believe, a reasonable
17 presumption is that the entire Spire enterprise leverages the software’s capabilities, which
18 serves the entire corporate structure (i.e., the entire “enterprise”). As such, as discussed on

¹ Flaherty rebuttal, page 17, lines 2-3.

1 pages 44 through 46 of my direct testimony, I proposed an adjustment that allocates the
2 rate base and depreciation expense of New Blue based on Spire’s company-wide 3-factor
3 formula.

4 **Q. Does Spire agree with your proposed adjustment?**

5 A. No. The primary Spire witnesses who addressed this issue, Mr. Hyman and Mr. Buck,
6 argue that my proposed adjustment should not be adopted.

7 **Q. Please summarize Mr. Hyman’s and Mr. Buck’s statements regarding New Blue.**

8 A. On page 18 of his rebuttal testimony, Mr. Hyman states that New Blue should not be
9 allocated to other Spire entities because, “Alagasco and EnergySouth still maintain their
10 own information management systems and utilize them to support their operations in
11 Alabama and Mississippi....” Mr. Hyman then notes these entities have a “remote
12 connection” to Spire’s Missouri utilities.

13 Mr. Buck states explicitly that my “claim that no study was undertaken related to [cost
14 allocations for the New Blue system] is wrong.”²

15 **Q. Do you believe the Commission should be persuaded by Mr. Hyman’s statements?**

16 A. No. I find Mr. Hyman’s explanations more puzzling than illuminating. Mr. Hyman’s
17 statements call into question why LAC and MGE ratepayers are individually paying for a
18 system that is designed to serve an entire corporate enterprise. Furthermore, Mr. Hyman
19 states that Alagasco and EnergySouth have a connection to the Missouri utilities, yet
20 maintains that not a single dollar of New Blue costs should be allocated to these entities.

21 **Q. Do you believe the Commission should be persuaded by Mr. Buck’s statements?**

22 A. No. On page 25 of Mr. Buck’s rebuttal testimony, Mr. Buck states that “[Ms. Azad’s]
23 claim that no study was undertaken related to these cost allocations is wrong.” In an
24 apparent attempt to support his counterclaim that Spire performed such a study, Mr. Buck

² Buck rebuttal, p. 25, line 17.

1 provides a reference to “workpapers” provided in discovery which clearly do not contain a
2 study such as the one described in Spire’s CAM.^{3,4} As such, instead of countering my
3 assertion, Mr. Buck’s statement further supports my original statement that no such study
4 has been performed.

5 **Q. Should the physical distance between Spire’s subsidiaries be an issue in the allocation**
6 **of New Blue?**

7 A. No. For example, Alagasco’s service territory is in the Birmingham, AL area, which is
8 approximately 500 miles from Spire’s headquarters in St. Louis. MGE primarily serves
9 Kansas City, MO, which is approximately 250 miles from St. Louis. Both Alagasco and
10 MGE serve remote locations relative to St. Louis, yet only MGE and LAC are allocated
11 costs for New Blue.

12 **Q. Should the fact that LAC purportedly does not use New Blue for its other utility**
13 **operations be a factor in the Commission’s decision on this adjustment?**

14 A. No. The Commission should determine if LAC *should* allocate these enterprise-wide costs
15 to all entities in the enterprise. The Commission should further determine if it is fair and
16 reasonable for MGE and LAC ratepayers to be the sole recipients of these costs.

17 **B. Shared Services Cost Trends**

18 **Q. In your direct testimony, what did you recommend for purposes of the costs related**
19 **to shared services?**

³ I have included Spire’s “workpapers” and related data request response as Attachment AA-S-1. I would urge the Commission to review this response and assess for itself whether or not a study, as described in Spire’s cost allocation manual, was provided.

⁴ Specifically, as noted in LAC/MGE’s cost allocation manual: “All costs, including capital costs related to the operation of mainframe systems will be allocated based on a percentage of operating and production time dedicated to routine affiliate activities as compared to the total for each system. ***Such allocations shall be based on a study performed annually.***” (emphasis added). Laclede 2016 CAM, p. 17.

1 A. As noted on pages 42 and 43 of my direct testimony, I recommended an adjustment for
2 shared services costs, which is consistent with the trend observed by the company's witness
3 for the preceding prior three years.

4 **Q. What is the Spire witnesses' position with respect to the proposed shared services**
5 **costs adjustment sponsored in your testimony?**

6 A. Mr. Flaherty claims that the costs in 2017 are outside the test year and speculative.
7 However, the Spire true-up period extends through September 30, 2017. To the extent Mr.
8 Flaherty's observed shared services cost savings in prior years is a reflection of Spire's
9 success in cost management and anticipated to continue, one would expect that such costs
10 would continue to decline, or at a minimum, stay constant. Instead, as Mr. Flaherty states
11 on page 42 of his rebuttal testimony, the company now claims that shared services costs
12 are expected to *increase* in 2017.

13 If the Commission chooses to accept Mr. Flaherty's assertion—namely that LAC and MGE
14 shared services costs are rising, not falling—this would also mean that these costs will
15 continue to have an even more significant impact on LAC and MGE ratepayers. This is all
16 the more reason the Commission should order a detailed investigation of Spire's affiliate
17 transactions and shared services costs following the establishment of the SSC and its recent
18 mergers.

19 Regarding benefits of the merger, Mr. Flaherty states that, "from LAC's (and MGE's)
20 perspective, avoiding [prior owner joint and common] costs creates a **direct benefit to**
21 **MGE customers in lower costs than would have been borne by MGE customers.** And
22 as shown in my direct testimony, **total Spire Shared Services costs** have been significantly
23 reduced from the acquisition, which benefits both LAC and MGE."⁵ (emphasis added)
24 However, if the Commission adopts Mr. Flaherty's testimony regarding the rising shared
25 services costs, as the table below illustrates, any beneficial impact on shared services costs

⁵ Flaherty rebuttal, page 16, lines 3-5.

1 from Spire’s acquisitions appears short-lived and shared services costs are now increasing
2 at an alarming rate.

Spire Shared Services Costs					
	(A)				(B)
	2013	2014	2015	2016	2017
Total Shared Services Cost	\$375	\$344	\$325	\$322	\$344
Change in Cost Year-on-Year (Reduced Cost)		(30)	(19)	(3)	\$22

(A) Reproduction from Flaherty rebuttal testimony, page 41, Table 2

(B) Added based on Flaherty rebuttal testimony, page 42, line 2

3
4 In an apparent attempt to justify why my proposed trend adjustment should not be adopted,
5 on page 42 of his rebuttal testimony, Mr. Flaherty states that Spire Shared Services costs
6 are expected to increase in 2017 by approximately \$22 million to \$344 million, as shown
7 in the table above. Later on the same page, however, when advocating that no focused audit
8 is necessary, Mr. Flaherty states that, “there does not appear to be an adverse trend [in
9 shared services costs] that needs to be investigated,”⁶ with an external audit.

10 The table above illustrates that, despite continuing anticipated synergy savings, it appears
11 that based on Mr. Flaherty’s testimony, in 2017 the increase in shared services costs are
12 anticipated to be enough to net to zero any reduction in shared services savings realized in
13 the previous two years combined. This is further evidence of the need for a thorough
14 investigation of Spire’s SSC to determine why shared services costs are increasing
15 drastically, even with the transactions, which should contribute to the reduction of shared
16 services in the years following several mergers.

17 Mr. Flaherty’s second issue with this adjustment is that it is based on a particular area of
18 cost impacts. My review was intended to address the impact of shared services and cost
19 allocations in particular. This is one of the areas impacting revenue requirement sought by
20 the company. Mr. Flaherty’s third issue with this adjustment is the expectation that the

⁶ Flaherty, Rebuttal, page 42, lines 15-16.

1 observed historical trend noted in his testimony would continue into a succeeding year. I
2 address this in conjunction with his first issue (earlier) and fourth issue, which is that the
3 trend is based on the impact of synergies from transactions that Mr. Flaherty states “are not
4 replicated in 2016.”⁷

5 **Q. Does Mr. Flaherty’s assertion regarding prior merger synergies not being**
6 **reproduceable appear reasonable?**

7 A. No. According to Mr. Flaherty’s testimony, Laclede and MGE’s annual run-rate merger
8 synergy savings, which represent \$50 million of savings in total per year, and \$37 million
9 of O&M annually, “will continue into perpetuity and will escalate at a blended inflation
10 rate...”⁸ The following table is based on these figures and presented for illustrative
11 purposes regarding the Laclede-MGE transaction, which has since been followed by the
12 Alagasco and EnergySouth acquisitions, the savings from which are not reflected below.
13 This is to put into context the company’s presented merger savings relative to shared
14 services costs trends noted in the preceding table (and recognizing the table below focuses
15 on only one of several recent Spire acquisitions).

⁷ Flaherty rebuttal, page 39, line18.

⁸ Flaherty rebuttal, page 6, lines 11-15 and page 7, lines 3-6.

Realized Merger Synergies			
Laclede-MGE			
(in million \$)			

(A)			Average annual synergies based on prior 3 years
FY 2014	FY 2015	FY 2016	
\$30	\$39	\$50	\$40

(A)			Average annual synergies based on prior 3 years
FY 2016	FY 2017	FY 2018 +	
\$50	\$50	\$50	\$50

Figures are based on Flaherty rebuttal, Table 1, and figures in Flaherty
rebuttal, pages 6-7 and represent nominal dollars, unadjusted for inflation.

Assuming an average annual synergy savings of \$50 million, from just the Laclede and MGE merger, Spire should be able to at least maintain (rather than experience escalating) costs in its shared services in 2017. As I indicated, this Table only illustrates the potential results of the MGE transaction. The mergers with Alagasco (in 2014) and Energy South (in 2016), are not included in the table above. Both mergers followed the MGE acquisition, and are, thus, in the earlier years following the merger—year 3 for Alagasco, and year 1 for EnergySouth, presumably with still escalating annual synergies as they likely have not yet reached steady state.

For reference, Alagasco and EnergySouth have approximately 524,000 customers and 1,100 employees combined, compared to MGE’s approximate 508,000 customers and 560 employees. Given the scale of potential savings to be achieved from the acquisition of Alagasco and EnergySouth, and the synergy savings from the MGE acquisition, the company has not demonstrated why it is unable to maintain the level of shared services cost savings “trend” it purports to have achieved from 2013 to 2016. That the trend does

1 not continue is further evidence that the impact of the newly acquired companies on shared
2 costs should be fully investigated in the recommended audit.

3 **Q. Have you made any modifications to your trend adjustment in response to the**
4 **information noted in Spire’s testimonies?**

5 A. I have. Mr. Flaherty’s fifth issue regarding my proposed adjustment for shared services
6 costs is my application of a declining real CAGR, which is adjusted for inflation, to a
7 nominal cost base, that is, current dollars from 2016. I inadvertently used the real rather
8 than nominal rate in my original calculation. I have accordingly modified the adjustment
9 related to the trend in shared services costs, rather than real CAGR rate. The resulting
10 adjustment is an estimated O&M reduction of \$2,062,266 to Laclede Gas and \$922,081 to
11 MGE.

12 **IV. INDEPENDENCE OF STRATEGY& AND OBJECTIVITY OF**
13 **FLAHERTY TESTIMONY**

14 **Q. Have Mr. Flaherty’s comments in his rebuttal testimony addressed the concerns you**
15 **raised in your direct testimony regarding a lack of independence of Strategy& and**
16 **objectivity in Mr. Flaherty’s review?**

17 A. No. The issues I raised in my direct testimony still stand. That is, Mr. Flaherty’s analysis
18 may provide some value, but should not be treated as an independent third-party assessment
19 given Mr. Flaherty’s significant involvement in designing and recommending the
20 processes, the effectiveness of which he was engaged to testify. Mr. Flaherty’s response
21 in his rebuttal contains a number of misstatements, none of which change these facts. For
22 one, he claims that I “incorrectly assume” he performed an audit at Spire⁹ while I explicitly
23 stated in my direct testimony that, “Mr. Flaherty was not performing a financial statement
24 audit” and that nonetheless, “the PCAOB guidance is a useful tool to assess how an

⁹ Flaherty rebuttal, page 30, line 22 to page 31, line 1.

1 established professional organization defines and evaluates independence.”¹⁰ Mr.
2 Flaherty’s other statements are equally ineffective as a response to my point. For example,
3 he states that he has no obligation to Spire¹¹ and further states that because he is a consultant
4 to, and not in management at Spire, he and Strategy& would “not be reviewing [their] own
5 decisions.”¹² In this engagement, however, he was reviewing the effectiveness of the
6 implementation of Strategy&’s and Mr. Flaherty’s own prior recommendations to Spire.
7 The fact that Mr. Flaherty is unable to acknowledge that hiring the consultant who designed
8 a system to evaluate the effectiveness of the system may create a relationship that is not
9 fully independent, at least in appearance if not in fact, is evidence of his lack of objectivity.

10 Lastly, Mr. Flaherty maintains a position that because cost allocation practices have been
11 in place for years and are generally based on a sound foundation, naturally no issues are
12 likely to exist. It appears consistent with that approach that Mr. Flaherty would testify that
13 Spire’s “process is well-defined,” “working as intended,” and that it “delivers reasonable
14 results”¹³ without the need to even review the costs charged to the utilities.¹⁴

15 **V. INSUFFICIENCY OF EVIDENCE TO SUPPORT CONFORMANCE**
16 **WITH AFFILIATE TRANSACTIONS RULE**

17 **Q. In rebuttal testimony, did Spire’s witnesses respond to the company’s lack of evidence**
18 **to support compliance with Missouri’s Affiliate Transactions Rule (“the Rule”)?**

19 A. Yes. Mr. Flaherty response confirms that his analysis was not tailored to the specific
20 interpretation and requirements of the Missouri affiliate transactions rule, nor was it
21 performed at a level of detail sufficient to conclude the allocation of the shared services
22 and affiliate transactions charges to LAC or MGE were appropriate. Mr. Flaherty stated

¹⁰ Azad direct, footnote 29.

¹¹ Flaherty rebuttal, p. 31, line 6.

¹² Flaherty rebuttal, p. 31, lines 9-10.

¹³ Flaherty rebuttal, p. 31, lines 4-5.

¹⁴ Flaherty rebuttal, p. 31, lines 20-21, Mr. Flaherty states “we were not reviewing ‘charges’ from transactions.

1 in his rebuttal testimony, that he was “aware of this Rule,” but “it had not been the basis
2 for the specific analyses that [he] conducted in determining whether Spire costs were
3 reasonable and consistent with this Rule”¹⁵ despite the fact that he recognizes “the Rule is
4 controlling with respect to this matter.”¹⁶ Furthermore, in his analysis, Mr. Flaherty admits
5 he was “not reviewing ‘charges’ from transactions.”¹⁷ He also sites other authoritative
6 guidance, but does not address the fact the Missouri Affiliate Transaction Rules contain
7 specific guidelines for a utility’s recording and reporting practices. Neither the utility or
8 its consultants have discretion to deem deviations from the Rule as appropriate because, in
9 the company’s or its consultants’ opinion, they “support the intent of the Rule.” Nothing
10 presented by Spire or its consultants demonstrates otherwise.

11 **VI. NON-COMPLIANCE WITH COST ALLOCATION MANUAL**

12 **Q. On pages 39 and 40 of your testimony, you comment that Spire, in some cases, does**
13 **not enforce the policies and procedures of its CAM. You then provide an example**
14 **regarding the utilization of exception time reporting. Did any Spire witnesses respond**
15 **to your assertion?**

16 A. Yes. On pages 3 and 4 of his testimony, Mr. Krick states that the inconsistency I noted in
17 my direct testimony is a “misunderstanding” on my part.

18 **Q. Do you still believe your original assertion was accurate?**

19 A. Yes. I believe the Commission should disregard Mr. Krick’s statements because they are
20 evasive and do not directly address the inconsistency that I noted. Instead, the Commission
21 should simply note the obvious (and explicit) contradiction between Spire’s CAM—
22 representing the time reporting policies Spire is claiming it follows—and Spire’s data
23 request response—which, in this case, represents the time reporting policy Spire is actually
24 following. As noted in my direct testimony, Spire’s CAM explicitly states that, for certain

¹⁵ Flaherty rebuttal, p. 22, lines 10-12.

¹⁶ Flaherty rebuttal, p. 23, line 14.

¹⁷ Flaherty rebuttal, p. 31, lines 20-21.

1 departments, “direct labor shall be charged to the service under an exception time reporting
2 methodology...”¹⁸ while in response to discovery, Spire explicitly stated that “exception
3 time reporting isn’t used.”¹⁹

4 **Q. Are there additional examples of Spire not following the policies and procedures**
5 **noted in its CAM?**

6 A. Yes. Mr. Buck’s rebuttal testimony regarding New Blue provides an additional example of
7 LAC/MGE not following the policies and procedures noted in its CAM. Specifically, Mr.
8 Buck states that, “CC&B costs were allocated based on the number of customers at each
9 utility whereas Powerplant costs were allocated based on fixed assets.” Neither number of
10 customers nor fixed assets are listed as possible allocation bases to allocate costs of
11 information systems in Spire’s CAM.²⁰

12 **VII. INCONSISTENCY IN COST ALLOCATION INFORMATION**
13 **PROVIDED BY SPIRE**

14 **Q. Have Spire’s rebuttal responses resolved the problems with the inconsistency of**
15 **responses the company has provided with respect to its cost allocations information?**

16 A. No. In fact, these issues are illustrated further in the rebuttal testimonies of Mr. Krick and
17 Mr. Flaherty, who, state that, “Laclede Investment LLC – this entity did receive
18 allocations”²¹ and “Ms. Azad ... incorrectly indicates that Laclede Investment LLC does
19 not receive any allocations from Spire Shared Services.”²² Spire’s response to discovery
20 clearly responds to the contrary. Specifically, in OPC DR 1021.5.1, which requested each

¹⁸ Laclede 2016 CAM, p. 13 and 14.

¹⁹ Response to discovery, OPC Data Request 7126.

²⁰ Specifically, “Information Systems” allocation bases listed on Laclede’s 2016 CAM at p. 17 include: percentage of operating and production time dedicated to routine affiliate activities as compared to the total for each system. Such allocations shall be based on a study performed annually; number of personal computers assigned on a departmental basis; and proportion of direct labor reported by each department for an affiliate.

²¹ Krick rebuttal, page 5, line 5.

²² Flaherty rebuttal, page 34, lines 11-12.

1 operating company or affiliate that did not receive SSC allocations or charges in the test
2 year, and in OPC DR 1021.5.2, requesting each operating company or affiliate not
3 receiving SSC allocations or charges, Spire lists Laclede Investment LLC in response to
4 both.²³

5 **Q. Have Spire’s witnesses provided a rationale for the inconsistent manner in which**
6 **Spire has presented its allocation factor data?**

7 A. Mr. Flaherty first makes the false statement that he has: “tried to obtain workpapers or
8 information” from me and that “he has not received any response,” claiming that he will
9 thus “reserve the right” to “circle back to this in surrebuttal.”²⁴ He then asserts that I am
10 using “too literal” and “overly specific” definition for allocation factors. Next, he states
11 that the change in the SSC formation resulted in changes in use of allocations—a point I
12 had already identified as one stemming from changes in Spire’s business and leading to
13 changes in cost assignments. This change creates a greater need for a detailed review of
14 the before and after cost allocations through an external independent audit. Finally, Mr.
15 Flaherty does admit a “sporadic use” of some of the allocation factors during the test year.²⁵

16 **Q. First, please address Mr. Flaherty’s statements regarding his attempt to obtain**
17 **workpapers and information from you.**

18 A. My workpapers were attached to my direct testimony.

19 **Q. Has Mr. Flaherty presented discovery requests to you regarding your assertions?**

20 A. No.

21 **Q. Has Mr. Flaherty contacted you to discuss questions regarding your assertions?**

22 A. No.

²³ Attachment AA-S-2 for reference.

²⁴ Flaherty rebuttal, p. 46, line 1.

²⁵ Flaherty rebuttal, p. 47, line 3.

1 **Q. As of the time of filing his testimony, did you have correspondence with Mr. Flaherty,**
2 **Strategy&, or Spire?**

3 A. Yes. At the request of Spire, I spoke with Jon Clabault of Strategy& to walk through
4 questions Spire or Strategy& had about my testimony. At the conclusion of the call Mr.
5 Clabault indicated he understood my calculations and that he believed he had the
6 information necessary to replicate the results I included in my direct testimony. The
7 conversation spanned less than 15 minutes and there were no questions on “obtaining” my
8 workpapers, which had been filed with my direct testimony. This teleconference took place
9 on October 4th—approximately two weeks prior to Mr. Flaherty filing his testimony. Mr.
10 Flaherty did not attend the discussion and was not included on Spire’s correspondence
11 with OPC and AzP. To the extent Jon Clabault was addressing Mr. Flaherty’s questions, it
12 appears there was a lack of internal communication at Strategy&.

13 **Q. Please address Mr. Flaherty’s concern with your definition of allocation factor.**

14 A. Mr. Flaherty suggests that because Spire utilizes, for instance, a three-factor formula for
15 allocations to corporate, to the gas utilities, the MO gas utilities, and MO companies, it is
16 appropriate that these factors be collectively considered “three-factor formula” allocators,
17 generally.

18 **Q. What do you believe is the issue with this broader definition of allocation factors?**

19 A. From an accounting perspective, the examples above are used in differing contexts for
20 allocating different types of costs, and can yield widely different results. For example,
21 according to Spire’s response to discovery in 2016, the various three-factor formulas—
22 “corporate-wide,” “gas utilities only,” “MO gas utilities only,” and “MO only total”—
23 varied in the percentage charged to LAC from 45.2 percent to 63.2 percent, and in the
24 percent charged to MGE from 23.5 percent to 32.6 percent. These represent ranges of 18
25 percent and 9.1 percent, respectively.²⁶ Thus, when reviewing the appropriateness of the

²⁶ PPT slide in DR 142, slide 19, “Allocations Factors Summary (pre-EnergySouth)”, which appears to be the information relied upon by Mr. Flaherty in his direct testimony, p. 34 of 279 in workpapers.

1 allocations and the impact on utility rates, it is necessary to go beyond Mr. Flaherty's
2 overly-broad definition and assess the reasonableness of the actual percentage—the literal
3 and specific definition—the percentage of costs charged to the utility.

4 **Q. Has Mr. Flaherty responded to your observation that several of the changes that are**
5 **known and should have been measurable to the company are not adjusted for by**
6 **Spire or in Mr. Flaherty's direct testimony?**

7 A. Yes. Mr. Flaherty responded regarding the impact of Spire's acquisition of EnergySouth
8 and formation of its new entities. Regarding Spire Resources LLC, Spire Midstream LLC,
9 and Spire STL Pipeline, Mr. Flaherty stated that he did not consider them in his analysis
10 due to their limited impact on 2016 allocations because the first two hold no assets,
11 revenues, or resources, and Spire only started including Pipeline in allocations in
12 FY2017.²⁷ He states that he excluded EnergySouth because, in 2016 Sempra was still
13 providing Spire transition services, and it "could not provide the required level of detail
14 back to 2013."²⁸

15 **Q. Does Mr. Flaherty's response appear reasonable?**

16 A. Mr. Flaherty's explanation regarding the limited effect of the holding companies (Spire
17 Resources and Spire Midstream) on allocations is flawed. In his argument, Mr. Flaherty
18 assumes that the corporate 3-factor formula is an appropriate allocator and thus given the
19 level of assets, revenues, and employees at these entities, it would reasonably follow that
20 they not receive allocations. It is not appropriate to allocate costs on the basis of the
21 Massachusetts / 3-factor formula in this instance. Allocations to non-utility affiliates, which
22 by design often do not hold the same large capital assets, employees, and revenues as
23 utilities do, is not an appropriate means of assigning charges based on cost causation.
24 Certain common and corporate costs such as compliance with SEC filing requirements, or

²⁷ Flaherty rebuttal, p. 48; however, on page 36 of his testimony, in Figure 2, Mr. Flaherty states this inclusion takes place in FY 2018.

²⁸ Flaherty rebuttal, p. 49, lines 3-4.

1 residual corporate overhead costs, such as executive benefits and compensation not directly
2 assignable to a specific entity, should still be allocated to all the entities benefiting from
3 these costs. Thus, the Massachusetts or 3-factor formula Mr. Flaherty uses as the basis for
4 his argument is not appropriate for allocations under these conditions and would lead to
5 the utilities to naturally receive a disproportionately larger—or all—charges, some of
6 which should be charged to all affiliates, including Spire Resources LLC and Spire
7 Midstream LLC. Mr. Flaherty’s argument for why these entities did not receive
8 allocations, demonstrates Spire’s inappropriate use of an allocator (the Massachusetts or
9 three-factor formula) rather than a legitimate reason to exclude these entities from the pool
10 of companies receiving allocations.

11 Regarding the impact of EnergySouth and Spire STL Pipeline on allocations, I believe
12 these impacts should be known and measurable at this point, and incorporated into or
13 adjusted for in the revenue requirements of LAC and MGE. It does not appear that Spire
14 and its consultants have made a reasonable effort to quantify and account for the impact of
15 their integration on overall shared services costs and the resulting allocations to LAC and
16 MGE for the rate effective period.

17 **Q. Can you provide any precedent or guidance in support of your discussion on**
18 **allocations to holding companies?**

19 A. The Commission’s March 8, 2017 Order in File No. ER-2016-0285 is a recent illustration
20 of this point. In that Order, the Commission approved KCPL’s CAM, adopting a general
21 allocator for assigning residual common costs, such as those I discussed earlier. In this
22 Commission-approved CAM, the Massachusetts formula is reserved for the regulated
23 operations of KCPL. For activities involving non-regulated operations, a general allocator
24 based on “an entity’s relative ratio of direct and assigned expenses to total direct and
25 assigned expenses incurred” is used.²⁹

²⁹ Exhibit B, Page 13 of 113, KCPL CAM ER-2016-0285 Stipulation and Agreement dated February 10, 2017, approved by the Commission on March 8, 2017.

1 **VIII. EXTERNAL AUDIT OF SSC COST ALLOCATION**

2 **Q. On pages 5 through 7 of your direct testimony, you recommend that the Commission**
3 **order an independent audit to “assess the adequacy of Spire’s processes and internal**
4 **controls related to Spire shared services and to make recommendations for an**
5 **updated and revised CAM for LAC and MGE.” Do any other OPC witnesses address**
6 **the need for such a review?**

7 A. Yes. Mr. Chuck Hyneman also addresses in his surrebuttal testimony the importance and
8 urgency of conducting an independent third-party audit of affiliate transactions and shared
9 services costs. In addition to the reasons detailed in my direct and surrebuttal testimonies,
10 Mr. Hyneman discusses the recent affiliate transactions between Laclede Insurance Risk
11 Services (LIRS) and Spire’s Missouri utilities, and Spire’s inconsistent presentation of the
12 nature of these transactions in this rate case, which conflicts with the information provided
13 by the company in its Annual Report. Mr. Hyneman also discusses concerns over Spire’s
14 lack of transparency and compliance with the affiliate transactions rule since 1993, which
15 has been consistent with the company’s current position based on my review of its affiliate
16 transactions practices and deficiencies in record keeping and compliance with the Rule as
17 evidenced in Spire’s responses to discovery in the current proceeding.

18 **Q. Mr. Hyneman urges the Commission to rule on this issue in the current case. Do you**
19 **agree with his recommendation?**

20 A. Yes. I believe Mr. Hyneman’s sense of urgency is warranted and I support his position on
21 this issue. In addition, to mitigate any further potential detriments to ratepayers, I highly
22 recommend that the Commission require that Spire fully address and rectify any affiliate
23 transaction and shared services costs issues identified through the recommended audit
24 before filing LAC or MGE’s next application for a rate increase.

25 **Q. Do Spire or its witnesses contest the assertion that the Commission has the authority**
26 **to order this audit?**

1 A. No. In fact, Mr. Flaherty explicitly states that “*the Commission has the prerogative and*
2 *authority to order and undertake any investigation it considers necessary* based on its
3 observation of the facts and conditions...”³⁰ [emphasis added]

4 **Q. Does Mr. Flaherty believe a cost allocation audit is necessary?**

5 A. No. Mr. Flaherty states in his testimony that he does not believe a cost allocation audit is
6 “justified.”³¹ Mr. Flaherty also states that he believes utilities “have been allocating service
7 company or shared services costs under stringent guidelines” and that this results in a
8 “reduce[d]...potential for inappropriate charges requiring adjustment.”³²

9 **Q. Do you believe the Commission should consider cost allocations and affiliate**
10 **transactions as having a reduced “potential for inappropriate charges requiring**
11 **adjustment” as suggested by Mr. Flaherty?**

12 A. No. Since 2005 with the repeal of the original PUHCA, utility holding companies have
13 become increasingly complex. At the risk of stating the obvious, if a utility holding
14 company acquires another company, all else equal, the company becomes more complex,
15 as do its cost allocations and affiliate transactions. When a utility holding company acquires
16 several new subsidiaries in multiple jurisdictions in rapid succession, as Spire has done
17 over the past five years, the additional complexities are amplified, making a thorough
18 review of these affiliate relationships by the Commission even more vital.

19 **Q. Are you familiar with any past cases at the Commission that supports your**
20 **recommendation that cost allocations and affiliate transactions be viewed by the**
21 **Commission as a high-risk area?**

22 A. Yes. In a 2013 opinion, the Missouri Supreme Court found that there is an “inherent risk
23 of self-dealing” in affiliate transactions. In its opinion, the Missouri Supreme Court also
24 expressly stated that a “presumption of prudence,” similar to the approach Mr. Flaherty

³⁰ Flaherty rebuttal, page 42, lines 9-10.

³¹ Flaherty rebuttal, page 42.

³² Flaherty rebuttal, page 33.

1 appears to be recommending, is inappropriate for purposes of reviewing affiliate
2 transactions.³³

3 **Q. On page 2 of his rebuttal testimony, Mr. Krick states that he does not believe a cost**
4 **allocations audit is necessary, and also states that “a rate case proceeding does allow**
5 **the time needed to review the cost allocation procedures...” but it is dependent on**
6 **“scope, objective, and purpose of the review.” Do you know of any other state**
7 **commissions that review utility cost allocation and affiliate transaction issues outside**
8 **of rate case proceedings?**

9 A. Yes. Several states perform affiliate transactions audits outside of rate cases. While I did
10 not conduct a comprehensive review of all states, I am aware of several commissions that
11 perform these reviews. California, for example, regularly conducts affiliate transactions
12 audits. Similar to my recommendation from my direct testimony, California utilizes an
13 independent auditing firm to perform these audits.³⁴ Other states, such as New Jersey and
14 New York, perform affiliate transaction reviews in the course of comprehensive
15 management audits.^{35,36}

16 **Q. On page 2 of his rebuttal testimony, Mr. Krick indicates that he is unclear regarding**
17 **the “scope, objective, and purpose” of your recommended audit.**

18 **Can you please provide Mr. Krick and the Commission with additional guidance**
19 **regarding what you believe an appropriate scope, objective, and purpose would be**
20 **for your proposed audit?**

³³ Order No. SC92964; Attachment AA-S-3 for a full copy of the Opinion.

³⁴ Copies of the audit reports from the most recent audits performed are available at:
<http://www.cpuc.ca.gov/General.aspx?id=1459>

³⁵ For sample audit report from New Jersey, see:
<http://www.state.nj.us/bpu/pdf/auditpdfs/NorthStar%20NJNG%20Audit%20Final%20Report%206-26-14%20double%20sided.pdf>

³⁶ For sample audit report from New York, see:
<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=14-M-0001&submit=Search>

1 A. Yes. The proposed audit would seek to provide the Commission with an independent, third
2 party auditor's assessment of Spire's compliance with each of the rules laid out in the
3 Affiliate Transactions Rule. For illustration purposes, I have provided a template for the
4 chosen auditor to utilize when performing the audit. This is provided as Attachment AA-
5 S-4. In addition to this compliance checklist, I would also urge the Commission to include
6 as part of the auditor's scope, cost allocation considerations concerning the New Blue
7 system (discussed in additional detail in the *New Blue Allocation* section of this testimony).

8 **Q. Would you like to make any additional statements regarding the proposed audit?**

9 A. Yes. As noted on pages 46 through 48 of my direct testimony, one of the reasons I believe
10 it is necessary and prudent for the Commission to order a cost allocations audit is because
11 of the lack of responsiveness Spire demonstrated throughout the engagement with regard
12 to discovery. As I noted in my testimony, over 80% of data requests were received after
13 the 20-calendar day timeframe established in the procedural schedule for this case.

14 **Q. Did any Spire witnesses respond to your concerns regarding the company's discovery**
15 **issues during this proceeding?**

16 A. Yes. On pages 1 and 2 of his rebuttal testimony, Mr. Krick includes the following question
17 and answer:

18 Q. Were there significant delays and inadequacies in your direct responses (sic) to
19 discovery requests?

20 A. *While some of the requests were delayed within the allowed extension period,*
21 I attempted to answer each request by the deadline and provided the level of detail
22 available to satisfy the request. *I was unaware* until reading her testimony that Ms.
23 Azad felt there were significant inadequacies in our responses. It seemed to me the
24 level of detail we provided, particularly given the volume of requests we received
25 from her, was more than adequate. (emphasis added)

1 Mr. Krick’s claim that the requests “were delayed within the allowed extension period” is
2 inaccurate, if not disingenuous. Many of Spire’s responses exceeded even the extended
3 response period that Spire itself proposed. See Attachment AA-S-5 for email
4 correspondence between OPC and Spire related to this issue. Furthermore, Mr. Krick’s
5 claim that he was “unaware” of the discovery deficiencies until reading my testimony is
6 specious. Mr. Krick either knew, or, clearly should have known, about OPC’s concerns
7 because OPC had multiple phone and email correspondence regarding these deficiencies
8 with Spire’s primary discovery contact, Mr. Buck. See Attachment AA-S-6 for an example
9 of this correspondence.

10 **IX. LAC AND MGE SEPARATION**

11 **Q. On page 28 of your direct testimony, you note that Mr. Flaherty, with a few**
12 **exceptions, analyzed information for LAC and MGE on a combined basis. As such,**
13 **you note that Mr. Flaherty generally failed to identify and assess the costs to each**
14 **utility separately. How does Mr. Flaherty respond?**

15 A. Mr. Flaherty agrees on page 43 of his testimony that, “it is the case that the two utilities
16 have non-contiguous service territories and distinct customer bases” but he continues by
17 asserting that “this is not a relevant factor” and that “[f]urther delineation of the utility into
18 LAC and MGE would be of limited to no value in evaluating Spire’s *overall* ability to
19 control shared services costs.” [emphasis added]

20 Mr. Flaherty’s focus on evaluating Spire on an “overall” basis is misguided. As noted in
21 my direct testimony, LAC and MGE have separate customer bases, separate revenue
22 requirements, and, subsequently, pay different rates and follow different tariff schedules.
23 As such, the most proper way to review these two entities’ costs is on an individual basis.
24 If the Commission adopts Mr. Flaherty’s method of analyzing the costs of two utilities on
25 a combined basis, it will add an unnecessary layer of complexity and decrease
26 transparency. As an illustrative example, consider an individual LAC ratepayer. The LAC
27 ratepayer pays rates based on LAC’s individual revenue requirement. As such, the LAC

1 ratepayer has a right to expect that the costs he or she is paying to have been reviewed on
2 an individual basis—not through a review of some hypothetical hybrid entity.

3 **Q. Has Mr. Flaherty provided any precedent as to why the two utilities should not be**
4 **assessed independently?**

5 A. No.

6 **Q. Does this conclude your surrebuttal testimony?**

7 A. Yes, it does.

Laclede Gas Company
GR-2017-0215 and GR-2017-0216

Response to OPC Data Request 8504

Question:

Please describe how the amount was determined to allocate to MGE the costs of the Enterprise Information Management System (New Blue).

Response:

The amounts allocated to MGE were dependent on the software. The attached workpaper, which was provided with the original workpapers delivered to OPC on April 13, 2017 details the allocation amounts and allocation methodologies utilized in the process.

Signed by: Glenn Buck

Enterprise Software Account 391500 at 12-31-16

Adjustments from LGC to MGE

Utility Acct	Company	Bus Seg	Asset Description	Software	Type	Balance	Allocation %	MGE	LGC
391500	Laclede Gas Company	10010	Oracle Enterprise Business Suite	Oracle/Hyperion	newBlue/Other	22,641,945.33	41.42%	9,378,293.76	13,263,651.57
391500	Laclede Gas Company	10010	STAT for Oracle EBS	Oracle/Hyperion	newBlue/Other	153,790.12	41.42%	63,699.87	90,090.25
391500	Laclede Gas Company	10010	Hyperion Upgrade 2016	Oracle/Hyperion	newBlue/Other	1,137,876.51	41.42%	471,308.45	666,568.06
391500	Laclede Gas Company	10010	Hyperion 600 Patch ERPi Adaptor	Oracle/Hyperion	newBlue/Other	343,507.24	41.42%	142,280.70	201,226.54
391500	Laclede Gas Company	10010	Oracle EBS Implementation-MGE Integ	Oracle/Hyperion	MGE Integration	3,271,531.93	100.00%	3,271,531.93	0.00
						27,548,651.13		13,327,114.71	14,221,536.42
391500	Laclede Gas Company	10010	Powerplant Implementation	PowerPlan	newBlue/Other	5,632,346.50	41.42%	2,332,917.92	3,299,428.58
391500	Laclede Gas Company	10010	Work Order Addition	PowerPlan	newBlue/Other	26,751.73	41.42%	11,080.57	15,671.16
391500	Laclede Gas Company	10010	PowerPlan Upgrade w/ Tax Repairs	PowerPlan	newBlue/Other	594,020.34	41.42%	246,043.22	347,977.12
391500	Laclede Gas Company	10010	Powertax and Provision Configure	PowerPlan	newBlue/Other	945.00	41.42%	391.42	553.58
391500	Laclede Gas Company	10010	PowerPlan Implementation-MGE Integ	PowerPlan	MGE Integration	2,057,187.12	100.00%	2,057,187.12	0.00
						8,311,250.69		4,647,620.25	3,663,630.44
391500	Laclede Gas Company	10010	Oracle Customer Care & Billing	CC&B	newBlue/Other	25,052,923.53	42.62%	10,677,556.01	14,375,367.52
391500	Laclede Gas Company	10010	CC&B Phase 2 Enhancements	CC&B	newBlue/Other	1,750,278.48	42.62%	745,968.69	1,004,309.79
391500	Laclede Gas Company	10010	CC&B Upgrade	CC&B	newBlue/Other	1,445,900.62	42.62%	616,242.84	829,657.78
391500	Laclede Gas Company	10010	Oracle CC&B - MGE Integration	CC&B	MGE Integration	12,678,027.68	100.00%	12,678,027.68	0.00
						40,927,130.31		24,717,795.22	16,209,335.09
391500	Laclede Gas Company	10010	G4 Rebuild for Maximo	Maximo	newBlue/Other	1,217,913.77	41.42%	504,459.88	713,453.89
391500	Laclede Gas Company	10010	IBM Maximo Implementation	Maximo	newBlue/Other	17,307,105.61	41.42%	7,168,603.14	10,138,502.47
391500	Laclede Gas Company	10010	GIS Upgrade for Maximo	Maximo	newBlue/Other	2,894,746.30	41.42%	1,199,003.92	1,695,742.38
391500	Laclede Gas Company	10010	Maximo Enhancements Phase 2 Impl	Maximo	newBlue/Other	1,664,374.74	41.42%	689,384.02	974,990.72
391500	Laclede Gas Company	10010	Maximo License True Up	Maximo	newBlue/Other	9,000.00	41.42%	3,727.80	5,272.20
391500	Laclede Gas Company	10010	Maximo Ph 3 Enhancements Imple	Maximo	newBlue/Other	961,264.48	41.42%	398,155.75	563,108.73
391500	Laclede Gas Company	10010	Maximo Enhancements Ph 2	Maximo	newBlue/Other	1,589,316.16	41.42%	658,294.75	931,021.41
391500	Laclede Gas Company	10010	Maximo - MGE Integration	Maximo	MGE Integration	14,473,563.36	100.00%	14,473,563.36	0.00
						40,117,284.42		25,095,192.62	15,022,091.80
Grand Total						116,904,316.55		67,787,722.80	49,116,593.75
						Total		MGE	LGC
Expense 7%						8,183,303.00	7.00%	4,745,141.00	3,438,162.00
						Total		MGE	LGC
						100.00%		41.42%	58.58%
Plant Balance									1,868,492,831
Account 391.5									116,904,317
Balance						2,990,113,148		1,238,524,634	1,751,588,515
						Total		MGE	LGC
						100.00%		42.62%	57.38%
Schedule AA-S-1									
2/6						# of Customers	1,048,782	447,033	601,749

Utility Acct	Company	Bus Seg	Asset Description	Software	Type	Depr Reserve			
391500	Laclede Gas Company	10010	Oracle Enterprise Business Suite	Oracle/Hyperion	newBlue/Other	6,596,513.51	43.07%	2,841,118.37	3,755,395.14
391500	Laclede Gas Company	10010	STAT for Oracle EBS	Oracle/Hyperion	newBlue/Other	34,090.16	43.07%	14,682.63	19,407.53
391500	Laclede Gas Company	10010	Hyperion Upgrade 2016	Oracle/Hyperion	newBlue/Other	29,088.64	43.07%	12,528.48	16,560.16
391500	Laclede Gas Company	10010	Hyperion 600 Patch ERPi Adaptor	Oracle/Hyperion	newBlue/Other	28,053.08	43.07%	12,082.46	15,970.62
391500	Laclede Gas Company	10010	Oracle EBS Implementation-MGE Integ	Oracle/Hyperion	MGE Integration	618,782.71	100.00%	618,782.71	0.00
						7,306,528.10		3,499,194.65	3,807,333.45
391500	Laclede Gas Company	10010	Powerplant Implementation	PowerPlan	newBlue/Other	1,642,322.38	43.07%	707,348.25	934,974.13
391500	Laclede Gas Company	10010	Work Order Addition	PowerPlan	newBlue/Other	6,866.21	43.07%	2,957.28	3,908.93
391500	Laclede Gas Company	10010	PowerPlan Upgrade w/ Tax Repairs	PowerPlan	newBlue/Other	76,232.62	43.07%	32,833.39	43,399.23
391500	Laclede Gas Company	10010	Powertax and Provision Configure	PowerPlan	newBlue/Other	132.27	43.07%	56.97	75.30
391500	Laclede Gas Company	10010	PowerPlan Implementation-MGE Integ	PowerPlan	MGE Integration	385,456.54	100.00%	385,456.54	0.00
						2,111,010.02		1,128,652.43	982,357.59
391500	Laclede Gas Company	10010	Oracle Customer Care & Billing	CC&B	newBlue/Other	5,992,970.57	42.62%	2,554,204.06	3,438,766.51
391500	Laclede Gas Company	10010	CC&B Phase 2 Enhancements	CC&B	newBlue/Other	326,731.86	42.62%	139,253.12	187,478.74
391500	Laclede Gas Company	10010	CC&B Upgrade	CC&B	newBlue/Other	28,684.32	42.62%	12,225.26	16,459.06
391500	Laclede Gas Company	10010	Oracle CC&B - MGE Integration	CC&B	MGE Integration	1,107,634.96	100.00%	1,107,634.96	0.00
						7,456,021.71		3,813,317.40	3,642,704.31
391500	Laclede Gas Company	10010	G4 Rebuild for Maximo	Maximo	newBlue/Other	291,296.42	42.62%	124,150.53	167,145.89
391500	Laclede Gas Company	10010	IBM Maximo Implementation	Maximo	newBlue/Other	4,644,598.28	42.62%	1,979,527.79	2,665,070.49
391500	Laclede Gas Company	10010	GIS Upgrade for Maximo	Maximo	newBlue/Other	692,443.61	42.62%	295,119.47	397,324.14
391500	Laclede Gas Company	10010	Maximo Enhancements Phase 2 Impl	Maximo	newBlue/Other	291,551.89	42.62%	124,259.42	167,292.47
391500	Laclede Gas Company	10010	Maximo License True Up	Maximo	newBlue/Other	262.50	42.62%	111.88	150.62
391500	Laclede Gas Company	10010	Maximo Ph 3 Enhancements Imple	Maximo	newBlue/Other	78,467.04	42.62%	33,442.65	45,024.39
391500	Laclede Gas Company	10010	Maximo Enhancements Ph 2	Maximo	newBlue/Other	27,533.84	42.62%	11,734.92	15,798.92
391500	Laclede Gas Company	10010	Maximo - MGE Integration	Maximo	MGE Integration	1,265,258.01	100.00%	1,265,258.01	0.00
						7,291,411.59		3,833,604.67	3,457,806.92
						24,164,971.42		12,274,769.15	11,890,202.27
						Total		MGE	LGC
						100.00%		43.07%	56.93%
						Reserve Balance			672,614,561
						Account 391.5			24,164,971
						Balance	1,139,062,662	490,613,073	648,449,590
						Total		MGE	LGC
						100.00%		42.62%	57.38%
						# of Customers	1,048,782	447,033	601,749

Schedule AA-S-1

Utility Acct	Company	Bus Seg	Asset Description	Software	Type	Total	MGE Adjustments from CCGC to MGE	
						Net Book Value	Net Book Value	Net Book Value
391500	Laclede Gas Company	10010	Oracle Enterprise Business Suite	Oracle/Hyperion	newBlue/Other	16,045,431.82	6,537,175.39	9,508,256.43
391500	Laclede Gas Company	10010	STAT for Oracle EBS	Oracle/Hyperion	newBlue/Other	119,699.96	49,017.24	70,682.72
391500	Laclede Gas Company	10010	Hyperion Upgrade 2016	Oracle/Hyperion	newBlue/Other	1,108,787.87	458,779.97	650,007.90
391500	Laclede Gas Company	10010	Hyperion 600 Patch ERPi Adaptor	Oracle/Hyperion	newBlue/Other	315,454.16	130,198.24	185,255.92
391500	Laclede Gas Company	10010	Oracle EBS Implementation-MGE Integ	Oracle/Hyperion	MGE Integration	2,652,749.22	2,652,749.22	0.00
						20,242,123.03	9,827,920.06	10,414,202.97
391500	Laclede Gas Company	10010	Powerplant Implementation	PowerPlan	newBlue/Other	3,990,024.12	1,625,569.67	2,364,454.45
391500	Laclede Gas Company	10010	Work Order Addition	PowerPlan	newBlue/Other	19,885.52	8,123.29	11,762.23
391500	Laclede Gas Company	10010	PowerPlan Upgrade w/ Tax Repairs	PowerPlan	newBlue/Other	517,787.72	213,209.83	304,577.89
391500	Laclede Gas Company	10010	Powertax and Provision Configure	PowerPlan	newBlue/Other	812.73	334.45	478.28
391500	Laclede Gas Company	10010	PowerPlan Implementation-MGE Integ	PowerPlan	MGE Integration	1,671,730.58	1,671,730.58	0.00
						6,200,240.67	3,518,967.82	2,681,272.85
391500	Laclede Gas Company	10010	Oracle Customer Care & Billing	CC&B	newBlue/Other	19,059,952.96	8,123,351.95	10,936,601.01
391500	Laclede Gas Company	10010	CC&B Phase 2 Enhancements	CC&B	newBlue/Other	1,423,546.62	606,715.57	816,831.05
391500	Laclede Gas Company	10010	CC&B Upgrade	CC&B	newBlue/Other	1,417,216.30	604,017.58	813,198.72
391500	Laclede Gas Company	10010	Oracle CC&B - MGE Integration	CC&B	MGE Integration	11,570,392.72	11,570,392.72	0.00
						33,471,108.60	20,904,477.82	12,566,630.78
391500	Laclede Gas Company	10010	G4 Rebuild for Maximo	Maximo	newBlue/Other	926,617.35	380,309.35	546,308.00
391500	Laclede Gas Company	10010	IBM Maximo Implementation	Maximo	newBlue/Other	12,662,507.33	5,189,075.35	7,473,431.98
391500	Laclede Gas Company	10010	GIS Upgrade for Maximo	Maximo	newBlue/Other	2,202,302.69	903,884.45	1,298,418.24
391500	Laclede Gas Company	10010	Maximo Enhancements Phase 2 Impl	Maximo	newBlue/Other	1,372,822.85	565,124.60	807,698.25
391500	Laclede Gas Company	10010	Maximo License True Up	Maximo	newBlue/Other	8,737.50	3,615.92	5,121.58
391500	Laclede Gas Company	10010	Maximo Ph 3 Enhancements Imple	Maximo	newBlue/Other	882,797.44	364,713.10	518,084.34
391500	Laclede Gas Company	10010	Maximo Enhancements Ph 2	Maximo	newBlue/Other	1,561,782.32	646,559.83	915,222.49
391500	Laclede Gas Company	10010	Maximo - MGE Integration	Maximo	MGE Integration	13,208,305.35	13,208,305.35	0.00
						32,825,872.83	21,261,587.95	11,564,284.88
						92,739,345.13	55,512,953.65	37,226,391.48

Enterprise Software Account 391500 at 12-31-16

<u>Utility Acct</u>	<u>Company</u>	<u>Bus Seg</u>	<u>Asset Description</u>	<u>Software</u>
391500	Laclede Gas Company	10010	Oracle CC&B - MGE Integration	CC&B
391500	Laclede Gas Company	10010	Maximo - MGE Integration	Maximo
391500	Laclede Gas Company	10010	Oracle EBS Implementation-MGE Integ	Oracle/Hyperion
391500	Laclede Gas Company	10010	PowerPlan Implementation-MGE Integ	PowerPlan
				Subtota
391500	Laclede Gas Company	10010	Oracle Customer Care & Billing	CC&B
391500	Laclede Gas Company	10010	CC&B Phase 2 Enhancements	CC&B
391500	Laclede Gas Company	10010	CC&B Upgrade	CC&B
391500	Laclede Gas Company	10010	G4 Rebuild for Maximo	Maximo
391500	Laclede Gas Company	10010	IBM Maximo Implementation	Maximo
391500	Laclede Gas Company	10010	GIS Upgrade for Maximo	Maximo
391500	Laclede Gas Company	10010	Maximo Enhancements Phase 2 Impl	Maximo
391500	Laclede Gas Company	10010	Maximo License True Up	Maximo
391500	Laclede Gas Company	10010	Maximo Ph 3 Enhancements Imple	Maximo
391500	Laclede Gas Company	10010	Maximo Enhancements Ph 2	Maximo
391500	Laclede Gas Company	10010	Oracle Enterprise Business Suite	Oracle/Hyperion
391500	Laclede Gas Company	10010	STAT for Oracle EBS	Oracle/Hyperion
391500	Laclede Gas Company	10010	Hyperion Upgrade 2016	Oracle/Hyperion
391500	Laclede Gas Company	10010	Hyperion 600 Patch ERPi Adaptor	Oracle/Hyperion
391500	Laclede Gas Company	10010	Powerplant Implementation	PowerPlan
391500	Laclede Gas Company	10010	Work Order Addition	PowerPlan
391500	Laclede Gas Company	10010	PowerPlan Upgrade w/ Tax Repairs	PowerPlan
391500	Laclede Gas Company	10010	Powertax and Provision Configure	PowerPlan
				Subtotal newBlue/Othe

Type	Balance	Depr Reserve	Net Book Value	gl_posting_mo_yr
MGE Integration	\$ 12,678,027.68	\$ 1,107,634.96	\$ 11,570,392.72	12/1/2016 0:00
MGE Integration	\$ 14,473,563.36	\$ 1,265,258.01	\$ 13,208,305.35	12/1/2016 0:00
MGE Integration	\$ 3,271,531.93	\$ 618,782.71	\$ 2,652,749.22	12/1/2016 0:00
MGE Integration	\$ 2,057,187.12	\$ 385,456.54	\$ 1,671,730.58	12/1/2016 0:00
 MGE Integration	\$ 32,480,310.09	\$ 3,377,132.22	\$ 29,103,177.87	
newBlue/Other	\$ 25,052,923.53	\$ 5,992,970.57	\$ 19,059,952.96	12/1/2016 0:00
newBlue/Other	\$ 1,750,278.48	\$ 326,731.86	\$ 1,423,546.62	12/1/2016 0:00
newBlue/Other	\$ 1,445,900.62	\$ 28,684.32	\$ 1,417,216.30	12/1/2016 0:00
newBlue/Other	\$ 1,217,913.77	\$ 291,296.42	\$ 926,617.35	12/1/2016 0:00
newBlue/Other	\$ 17,307,105.61	\$ 4,644,598.28	\$ 12,662,507.33	12/1/2016 0:00
newBlue/Other	\$ 2,894,746.30	\$ 692,443.61	\$ 2,202,302.69	12/1/2016 0:00
newBlue/Other	\$ 1,664,374.74	\$ 291,551.89	\$ 1,372,822.85	12/1/2016 0:00
newBlue/Other	\$ 9,000.00	\$ 262.50	\$ 8,737.50	12/1/2016 0:00
newBlue/Other	\$ 961,264.48	\$ 78,467.04	\$ 882,797.44	12/1/2016 0:00
newBlue/Other	\$ 1,589,316.16	\$ 27,533.84	\$ 1,561,782.32	12/1/2016 0:00
newBlue/Other	\$ 22,641,945.33	\$ 6,596,513.51	\$ 16,045,431.82	12/1/2016 0:00
newBlue/Other	\$ 153,790.12	\$ 34,090.16	\$ 119,699.96	12/1/2016 0:00
newBlue/Other	\$ 1,137,876.51	\$ 29,088.64	\$ 1,108,787.87	12/1/2016 0:00
newBlue/Other	\$ 343,507.24	\$ 28,053.08	\$ 315,454.16	12/1/2016 0:00
newBlue/Other	\$ 5,632,346.50	\$ 1,642,322.38	\$ 3,990,024.12	12/1/2016 0:00
newBlue/Other	\$ 26,751.73	\$ 6,866.21	\$ 19,885.52	12/1/2016 0:00
newBlue/Other	\$ 594,020.34	\$ 76,232.62	\$ 517,787.72	12/1/2016 0:00
newBlue/Other	\$ 945.00	\$ 132.27	\$ 812.73	12/1/2016 0:00
ar Implementation	\$ 84,424,006.46	\$ 20,787,839.20	\$ 63,636,167.26	
GRAND TOTAL	\$ 116,904,316.55	\$ 24,164,971.42	\$ 92,739,345.13	

Laclede Gas Company / Missouri Gas Energy
GR-2017-0215 / GR-2017-0216

Response to OPC Data Request 1021

Question:

1021

1. Reference the direct testimony of Laclede witness Timothy Krick page 9 lines 20-23. Please list and state the business purpose of each and every Spire operating company and/or affiliate.
2. Reference the direct testimony of Laclede witness Timothy Krick page 9 lines 20-23. Please describe how Spire's new Shared Services Company and model increases the transparency of Laclede and Spire's corporate allocations and affiliate transactions.
3. Reference the direct testimony of Laclede witness Timothy Krick page 10 lines 4-5. Please provide monthly allocation reports of costs from the Shared Services Company to each operating company and affiliate for the period August 2015 through March 2017. Please ensure the report describes the nature of the cost, allocation factor, and dollar amount of costs allocated or charged to each cost center.
4. Please provide a copy of each and every analysis or report created by the Shared Services Company for the period August 2015 through March 2017.
5. Please state each and every cost center, operating company or affiliate under the Spire umbrella that 1) did not receive Shared Services Company allocations or charges in the rate case test year and 2) are not currently receiving Shared Service Company allocations or charges.
6. Reference the direct testimony of Laclede witness Timothy Krick page 9 lines 3-6. For each operating company, affiliate and/or other entity that received cost allocations or charges from the Shared Services Company, please provide by month for the period August 2015 through March 2017, the dollar amount of a) average fixed assets, revenue, and payroll by month by entity.
7. Reference the direct testimony of Laclede witness Timothy Krick page 12 lines 18-21. For each operating company, affiliate and/or other entity that received cost allocations or other charges from The Laclede Group, please provide by month for the period August 2010 through the last month prior to the change to the Shared Services Company, a) a copy of each and every monthly corporate allocation report generated, the dollar amounts of costs allocated from or charged from The Laclede Group to: A) Laclede Gas Company, B) MGE (post acquisition), and C) each and every other operating company, affiliate or entity in which The Laclede Group allocated or assigned or charged costs.
8. Reference the direct testimony of Laclede witness Timothy Krick page 12 lines 15-17. Please provide a copy of each and every analysis and ongoing report referenced here for the period August 2015 through March 2017.
9. Reference the direct testimony of Laclede witness Timothy Krick page 13 lines 20-21. Please provide a copy of the training provided to employees referenced here.
10. Reference the direct testimony of Laclede witness Timothy Krick page 14 lines 5-7. Please provide a copy of the variances and trends that were analyzed and discussed for each month since the inception of the Shared Services Company through March 2017.
11. Reference the direct testimony of Laclede witness Timothy Krick page 14 lines 9-11 please provide a copy of the variances and future forecasts presented and discussed in each monthly business review meeting for each operating unit for each month since the inception of the

Shared Services Company through March 2017.

12. Reference the direct testimony of Laclede witness Timothy Krick page 14 lines 11-13 please provide a copy of each report that includes explanations for relevant variances that were distributed to executive management and the BOD monthly for each month since the inception of the Shared Services Company through March 2017.

Response:

1. The business purpose of each entity is stated in the articles of incorporation, reference workpaper OPC1021.1.
2. Increased transparency is largely due to the aggregation of the costs of shared service functions in one company versus allocated and charged directly between multiple companies. There are several benefits to this approach, not limited to but including a holistic view of the costs of these functions and services, removes overlap and redundancy of reporting, and easier to track movements of allocations from one company rather than allocations between several companies.
3. Reference supporting documentation provided in monthly excel reports DR1021.3. There are three categories of expenses (Directors Fees & Expenses, Directors Equity Compensation, and Employees Equity Compensation) that were integrated into the automated allocation process in early FY17, separate workpapers are provided for these items as an attempt to limit any confusion that may have resulted showing part of the year in Shared Services. Note that the Shared Services Company had no transactions in August 2015 and September 2015 because the entity was not used until FY 2016.
4. Documentation provided in #3, 10, and 12 encompasses all relevant analysis and reporting related to the Shared Services Company for the periods requested.
5. Affiliates/operating companies are listed below. The original direct charge or expense is accumulated at the cost center level, allocations of those expenses are not pushed down to individual cost centers, rather a shared service cost center is used for the corporate allocations, therefore in response to the question the majority of cost centers did not receive allocations.

5.1

Spire Inc. (Holding Company)
Spire Resources LLC
Spire Midstream LLC
Spire STL Pipeline LLC
Shared Services Company
Laclede Investment LLC
Laclede Gas Family Services, Inc. (dissolved 9/30/2016)
Spire Storage Inc - Storage Services
Energy South Inc.

5.2

Spire Inc. (Holding Company)

Spire Resources LLC
Spire Midstream LLC
Spire STL Pipeline LLC (will receive allocations in FY17 Q3)
Shared Services Company
Laclede Investment LLC
Laclede Gas Family Services, Inc. (dissolved 9/30/2016)
Spire Storage Inc - Storage Services
Energy South Inc.

6. The 3 factor allocation that includes the average of fixed assets, revenue, and payroll for the 12 month periods ending 9/30/2015, 9/30/2016, and the 6 months ending 3/31/2017 are attached as workpapers OPC1021.6. These factors are not calculated on a monthly basis.

7. Copies of annual CAM reports for FY2011 – FY2016 are attached, reference files OPC1021.7.

8. Documentation provided in #3, 10, and 12 encompasses all relevant analysis and reporting related to the Shared Services Company for the periods requested.

9. Please see the response to MPSC DR 0142.

10. Reference files attached OPC1021.10

11. Reference response to #12.

12. Reference files attached OPC1021.12 and OPC1021.14

Signed by: Glenn Buck



SUPREME COURT OF MISSOURI
en banc

OFFICE OF THE PUBLIC COUNSEL,)	
)	
Appellant,)	
)	
vs.)	No. SC92964
)	
MISSOURI PUBLIC SERVICE)	
COMMISSION and)	
ATMOS ENERGY CORPORATION,)	
)	
Respondents.)	

Appeal from the
Missouri Public Service Commission

*Opinion issued July 30, 2013, and modified on the Court’s own motion
September 10, 2013*

The Office of Public Counsel (OPC) appeals from an order entered by the Missouri Public Service Commission (PSC) rejecting the PSC staff’s proposed actual cost adjustment disallowances regarding Atmos Energy Corporation’s transactions with its affiliate. This Court reverses.

When a regulated gas corporation such as Atmos Energy engages in a business transaction with an affiliated entity, it is required to abide by the affiliate transaction rules set forth in the Missouri Code of State Regulations. *4 CSR 240-40.015-40.016*. Due to the inherent risk of self-dealing, the presumption of prudence utilized by the PSC when reviewing regulated utility transactions should not be employed if a transaction is between a utility and the utility’s affiliate.

Because the PSC reviewed the transaction between Atmos and its affiliate through the lens of the presumption of prudence, its order is unlawful and unreasonable. Accordingly, the order is reversed and the case remanded to the PSC for further review consistent with this opinion.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2007 and 2008, Atmos Energy Corporation operated as the largest natural-gas-only distributor in the United States. As a local distributing company, Atmos does not produce its own gas and does not purchase gas directly from producers. Instead, Atmos contracts with independent gas marketing companies to purchase natural gas. Atmos then delivers the purchased gas to customers through its local pipelines.

Atmos is subject to regulation as a gas corporation and public utility by the Missouri Public Service Commission (PSC). *See* § 386.020; § 386.250; *chapter 393*.¹ The PSC is a state agency established to regulate public utilities operating within the state. Pursuant to the statutory provisions in chapter 393, the PSC has jurisdiction over the rates and charges that Atmos imposes on its Missouri customers.²

In addition to the basic amount Atmos charges its customers under its published rate, Atmos also is permitted to charge its customers for additional costs it has incurred when the price it pays its suppliers for gas increases. These additional charges are recovered through a two-part mechanism known as a purchased gas adjustment/actual cost adjustment process (PGA/ACA). In the PGA portion of this process, a utility such

¹ All Missouri statutory references are to RSMo 2000 unless otherwise indicated.

² In 2012, Atmos sold its Missouri assets to Liberty Utilities.

as Atmos files annual tariffs in which it estimates its costs of obtaining gas over the coming year. The PGA amounts are then included in the customers' bills over the ensuing 12 months. Because it is difficult to estimate the projected changes in cost precisely, the utility then files for an adjustment, or ACA, if its actual cost is different than projected in its PGA filing. This ACA allows the PSC to correct any discrepancies between the costs billed and the costs actually incurred. When an ACA is received, the PSC staff audits the utility's gas purchases made during the ACA period in question. As part of the review, the staff evaluates whether the rates paid by consumers for natural gas sold during the period were "just and reasonable." § 393.130.1. The PSC then takes the staff's audit into consideration and ultimately determines the proper ACA amount.³

Atmos submitted its 2007-2008 ACA filings to the PSC on October 16, 2008. PSC staff audited the ACA filing by reviewing and analyzing the billed revenues and

³ The PSC adopted the PGA/ACA rate mechanism pursuant to its broad power to regulate gas utilities, rather than pursuant to a specific statutory directive. *See chapter 393; 4 CSR 240-13.010(1)(S)* (defining "purchased gas adjustment clause"); *4 CSR 240-40.018(1)(B)* (explaining use of purchased gas adjustment clauses to control financial gains or losses associated with gas price volatility). This Court has not addressed the authority of the PSC to utilize the PGA/ACA mechanism as part of its regulation of gas utilities, although one court of appeals decision has done so. *See State ex rel. Midwest Gas Users' Ass'n v. Pub. Serv. Comm'n or State*, 976 S.W.2d 470 (Mo. App. 1998) (discussing implied authorization for use of PGA/ACA mechanism when certain procedural protections are in place). Here, as neither party challenges the use of the PGA/ACA mechanism, this Court still does not reach that issue. *Cf. State ex rel. Util. Consumers' Council of Missouri, Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 46 (Mo. banc 1979) (disapproving *electric* utility's use of a fuel adjustment clause, which is similar to a PGA mechanism, because automatic adjustment clauses were unlawful under statutory scheme then in place); *State ex rel. AG Processing v. Pub. Serv. Comm'n*, 340 S.W.3d 146, 151 (Mo. App. 2011) (approving *electric* utility's use of fuel adjustment clause, which permitted automatic adjustment for actual fuel costs without a full rate hearing, pursuant to legislature's 2005 enactment of section 386.266).

actual gas costs for the period of September 1, 2007, to August 31, 2008, for each of Atmos' eight Missouri service areas. The staff's review raised concerns regarding Atmos' transactions with Atmos Energy Marketing LLC ("AEM").

AEM is a separate, unregulated but affiliated gas marketing company that is wholly owned by Atmos. Between April 2004 and November 2009, Atmos issued 48 requests for proposals (RFPs) in six other service areas. Of these 48 RFPs, AEM submitted bids in response to 24 and was the winning bidder in six.

Two of these six winning bids were for supplying gas to the Hannibal area operating system during the 2007-2008 ACA period. As required when taking bids, Atmos issued a RFP and interested suppliers submitted confidential bids proposing pricing for supplying gas services to Atmos for the Hannibal area. For the 2007-2008 ACA period at issue here, Atmos had two overlapping RFP processes; the first covered the period April 1, 2007, to March 31, 2008, and the second covered the period April 1, 2008, to March 31, 2009. For each period, Atmos sent RFP letters to 56 gas marketing companies.

During the first period, Atmos received only five bids that Atmos said conformed to the RFP requirements. Its affiliate, AEM, submitted the lowest bid at \$14,723,472. The lowest conforming bid submitted by a non-affiliated gas marketer was for \$15,069,726, approximately \$346,000 higher than AEM's bid. During the second period, only three suppliers submitted bids that Atmos said conformed to its RFP. Its affiliate, AEM, submitted a bid of \$13,947,511. This bid was approximately \$100,000 lower than the next lowest bid of \$14,049,424. Atmos awarded AEM both contracts.

Staff raised an issue about how the RFP set out certain supply requirements and whether AEM's bid actually conformed to the RFP requirements. It is uncontested that the RFP mandated that all gas supply be "firm and warranted." But the RFP process also allowed bidders to use either a primary natural gas receipt point or a secondary receipt point. Primary firm delivery is the highest priority gas supply and costs more because timely delivery is assured. Secondary in-path delivery is just below primary firm delivery. The secondary delivery method, though, is still "firm" though less convenient. Both forms of delivery are preferred over "interruptible" supply, because the timing of supplying interruptible gas may be interrupted if the supplier has an inadequate quantity of gas to meet all commitments at a specific time. Staff contended it was not clear that AEM's bid was for firm rather than interruptible gas because the transaction confirmation document that normally specifies "firm" delivery was left blank. Staff also contended the distinction between primary and secondary receipt points was not made clear in the RFP bidding, which could have allowed AEM an advantage if it had insider knowledge that Atmos was willing to accept a secondary receipt point bid. Staff contends this gave AEM a benefit in the transactions because of its affiliation with Atmos.

The transactions between a utility such as Atmos and its affiliate are governed by the PSC's affiliate transaction rules. The rules establish standards for a regulated gas utility's dealings with its affiliated companies. When acquiring natural gas from an affiliate, a regulated local distribution company can compensate its affiliate only at the lesser of the gas' fair market price or the fully distributed cost to the regulated gas

company were it to acquire the gas for itself. 4 CSR 240-40.016(3)(A).⁴ This provision is known as the asymmetrical pricing standard. *State ex rel. Atmos Energy Corp. v. Pub. Serv. Comm'n of State*, 103 S.W.3d 753, 762 (Mo. banc 2003).

Following its audit of the 2007-2008 ACA period, the PSC staff report indicated that Atmos had failed to comply with the affiliate transaction rules because it failed to properly document the fair market value and fully distributed cost of its transactions with AEM. Staff proposed a disallowance of \$308,733 for the Hannibal area, an amount equal to the profit AEM earned on that transaction.

In its filed response to the staff's recommendation, Atmos disagreed with the proposed disallowance and requested a hearing. The PSC conducted an evidentiary hearing on March 23 and 24, 2011, and issued a report and order on November 9, 2011.

In considering whether Atmos complied with the affiliate transaction rules, the PSC applied a presumption that Atmos' gas purchases were prudent and put the burden on staff to prove that the purchases from AEM were not prudent. The PSC determined that staff had failed to rebut this presumption, that the fair market price was established by Atmos' bidding process, and that this fair market price was less than the fully

⁴ 4 CSR 240-40.015 is the general affiliate transaction rule, while 4 CSR 240-40.016 specifically regulates transactions between regulated gas corporations and affiliated gas marketing companies. Both 240-40.015 and 240-40.016 provide:

(A) A regulated gas corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated gas corporation shall be deemed to provide a financial advantage to an affiliated entity if –

1. It compensates an affiliated entity for goods or services above the lesser of –
 - A. The fair market price; or
 - B. The fully distributed cost to the regulated gas corporation to provide the goods or services for itself ...

distributed cost for Atmos to acquire the gas itself. Based on this presumption, the PSC found compliance with the affiliate transaction rules and rejected staff's proposed disallowances regarding Atmos' transactions with AEM.

OPC filed an application for rehearing, which the PSC denied.⁵ OPC appealed and the court of appeals affirmed. This Court granted transfer pursuant to art. V, sec. 10 of the Missouri Constitution after opinion by the court of appeals.

II. STANDARD OF REVIEW

“Pursuant to section 386.510, the appellate standard of review of a [PSC] order is two-pronged: ‘first, the reviewing court must determine whether the [PSC]'s order is lawful; and second, the court must determine whether the order is reasonable.’” *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm’n of State*, 120 S.W.3d 732, 734 (Mo. banc 2003). The PSC’s order has a presumption of validity, and the burden of proof is on the appellant to prove that the order is unlawful or unreasonable. *State ex rel. Sprint Missouri, Inc. v. Pub. Serv. Comm’n of State*, 165 S.W.3d 160, 164 (Mo. banc 2005). The lawfulness of an order is determined “by whether statutory authority for its issuance exists, and all legal issues are reviewed de novo.” *AG Processing*, 120 S.W.3d at 734. “The decision of the [PSC] is reasonable where the order is supported by substantial, competent evidence on the whole record; the decision is not arbitrary or capricious or where the [PSC] has not abused its discretion.” *State ex rel. Praxair, Inc. v. Missouri Pub. Serv. Comm’n*, 344 S.W.3d 178, 184 (Mo. banc 2011).

⁵ OPC acts as consumers’ advocate and represents the public in utility cases before the PSC. The powers of the OPC are set forth in section 386.710.

III. ANALYSIS

The OPC argues that the PSC's order is unlawful and unreasonable in that it violates 4 CSR 240-40.016 and is not based on competent and substantial evidence. The order is unlawful, the OPC contends, because the PSC did not adhere to the asymmetrical pricing standard rules, which require documentation showing that Atmos charged customers the lesser of the fair market price or the fully distributed cost for the gas supply acquired from Atmos' affiliate, AEM. The OPC claims the order is unreasonable because it believes the PSC's conclusion that Atmos acquired gas supply from AEM at the lesser of the fully distributed cost or fair market price is not supported by competent and substantial evidence. This error was contributed to by the PSC's misreliance on the presumption of prudence in reviewing the bid of an affiliate, which OPC says is improper.

A. Presumption of Prudence

The burden is on the gas corporation to prove that the gas costs it proposes to pass along to customers are just and reasonable. § 393.150.2; *see also Matter of Kansas Power and Light Co., 30 Mo. P.S.C. (N.S.) 76 (1989)* (The gas corporation "has the burden of showing its proposed rates are just and reasonable ... [and] of showing the reasonableness of costs associated with its rates for gas.)

While the burden of proof rests on the gas corporation, the PSC's practice has been to apply a "presumption of prudence" in determining whether a utility properly incurred its expenditures. The presumption of prudence is not a creature of statute or regulation. It first was recognized by the PSC in *Matter of Union Electric, 27 Mo. P.S.C.*

(*N.S.*) 183 (1985) and has been applied by it since that point.

Under the presumption of prudence, a utility's costs "are presumed to be prudently incurred. ... However, the presumption does not survive a showing of inefficiency or improvidence" that creates "serious doubt as to the prudence of an expenditure." *Id. at 193*, quoting *Anaheim, Riverside, Etc. v. Fed. Energy Reg. Com'n*, 669 F.2d 799, 809 (D.C. Cir. 1981). If such a showing is made, the presumption drops out and the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent. *Id.*

The Missouri court of appeals has applied the presumption of prudence in cases involving affiliated companies without discussing whether its rationale is applicable to affiliates. *See, e.g., State ex rel. Pub. Counsel v. Pub. Serv. Comm'n*, 274 S.W.3d 569, 582 (Mo. App. 2009) (stating without analysis that "[a]lthough UE purchased the CTGs from its affiliates, the commission properly presumed that UE was prudent in its purchase of the CTGs"); *State ex rel. Assoc. Natural Gas Co. v. Public Serv. Comm'n*, 954 S.W.2d 520 (Mo. App. 1997) (without discussing rationale court assumes presumption applies and finds Commission erred in finding it was overcome and disallowing increase where no harm to customers was shown).

This Court has not addressed directly whether the presumption of prudence is valid in either affiliate or non-affiliate cases, although it did note its existence, without addressing its legitimacy, in *dicta* in a non-affiliate case, *State ex rel. Riverside Pipeline Co., L.P. v. Pub. Serv. Comm'n of State*, 215 S.W.3d 76, 85 (Mo. banc 2007). *Riverside* upheld a stipulation between the PSC and certain energy companies that precluded

prudence review by the PSC.

The OPC agrees that a presumption of prudence is appropriately applied in arms-length transactions, and this Court concurs. When dealing at arms-length, there is a diminished probability of collusion and the pressures of a competitive market create an assumption of legitimacy.

OPC argues, however, that a presumption that a transaction was agreed to prudently should not apply to *affiliate* transactions because of the greater risk of self-dealing when contracting with an affiliate. This Court again agrees. As noted in the report of a Congressional staff investigation of the particularly egregious affiliate dealings between Enron and its pipeline subsidiaries in the wake of Enron's collapse:

[W]henever a company conducts transactions among its own affiliates there are inherent issues about the fairness and motivations of such transactions. ... One concern is that where one affiliate in a transaction has captive customers, a one-sided deal between affiliates can saddle those customers with additional financial burdens. Another concern is that one affiliate will treat another with favoritism at the expense of other companies or in ways detrimental to the market as a whole.

Staff of Senate Comm. on Gov't Affairs, 107th Cong., *Committee Staff Investigation of the Federal Energy Regulatory Commission's Oversight of Enron* 26, n.75 (Nov. 12, 2002); see also Judy Sheldrew, *Shutting the Barn Door Before the Horse Is Stolen: How and Why State Public Utility Commissions Should Regulate Transactions Between a Public Utility and Its Affiliates*, 4 NEV. L.J. 164, 195 (2003).

This greater risk inherent in affiliate transactions arises because agreements between a public utility and its affiliates are not "made at arm's length or on an open market. They are between corporations, one of which is controlled by the other. As such

they are subject to suspicion and therefore present dangerous potentialities.” *Pac. Tel. & Tel. Co. v. Pub. Utils. Comm’n*, 215 P.2d 441, 449 (Cal. 1950) (*Carter, J., dissenting*).

Indeed, as the PSC acknowledged in *State ex rel. Atmos Energy Corp. v. Pub. Serv. Comm’n of State*, 103 S.W.3d 753, 763-64 (Mo. banc 2003), the affiliate transaction rules were adopted in response to the very kinds of concerns now raised by OPC. In that case, the concern was with a profit-producing scheme among certain public utilities termed “cross-subsidization,” through which some utilities would abandon their traditional monopoly structure and expand into non-regulated areas. “This expansion [gave] utilities the opportunity and incentive to shift their non-regulated costs to their regulated operations with the effect of unnecessarily increasing the rates charged to the utilities’ customers.” *Id.* at 764. See also *United States v. Western Elec. Co.*, 592 F. Supp. 846, 853 (D.D.C.1984) (“As long as a [utility] is engaged in both monopoly and competitive activities, it will have the incentive as well as the ability to ‘milk’ the rate-of-return regulated monopoly affiliate to subsidize its competitive ventures”).

Here, the concern is with an ability to offer a lower bid than one’s competitors because of access to inside information about costs and terms and because of an ability to shift fixed costs to the regulated utility, thereby allowing the affiliate to bid lower due to lower overhead costs. While this Court does not suggest that there was such conduct here, the risk of this conduct and the incentive to undertake it inherently exists in affiliate transactions.

For these reasons, the rationale for permitting a presumption of prudence in arms-length transactions simply has no application to affiliate transactions. The PSC enacted

the affiliate transaction rules in 2000 with the precise purpose of thwarting unnecessary rate hikes due to cross-subsidization. *State ex rel. Atmos*, 103 S.W.3d at 764. Those rules require that a utility must show that it paid the lesser of the fair market rate or the fully distributed cost to the regulated gas corporation and require that records be kept supporting these calculations. 4 CSR 240-40.016(4)(B) (“[T]he regulated gas corporation shall document both the fair market price of such ... goods and services and the fully distributed cost to the regulated gas corporation to produce the ... goods or services for itself.”)

The affiliate rules’ stated purpose is to “prevent regulated utilities from subsidizing their non-regulated operations ... and provide the public the assurance that their rates are not adversely impacted by the utilities’ nonregulated activities.” 240-40.015. A presumption that costs of transactions between affiliates were prudent is inconsistent with these rules.

For these reasons, the majority of other courts to address the issue have concluded that a presumption of prudence should not be applied to affiliate transactions. In *US W. Commc’ns, Inc. v. Pub. Serv. Comm’n of Utah*, 901 P.2d 270 (Utah 1995), the Supreme Court of Utah held that the Utah Public Service Commission correctly placed the burden on a telephone provider of proving that the services rendered by its affiliate were not duplicative. In support of its decision, the court remarked; “While the pressures of a competitive market might allow us to assume, in the absence of a showing to the contrary, that nonaffiliate expenses are reasonable, the same cannot be said of affiliate expenses not incurred in an arm's length transaction.” *Id. at 274.*

The Supreme Court of Idaho reached a similar conclusion in *Boise Water Corp. v. Idaho Pub. Utilities Comm'n*, 555 P.2d 163 (1976). The court refused to make an exception to the rule placing upon the utility the burden of proving reasonableness of its operating expenses paid to an affiliate, stating; “The reason for this distinction between affiliate and non-affiliate expenditures appears to be that the probability of unwarranted expenditures corresponds to the probability of collusion.” *Id. at 169*. See also, *Turpen v. Oklahoma Corp. Comm'n*, 769 P.2d 1309, 1320-21 (Okla. 1988) (“It is generally held that, while the regulatory agency bears the burden of proving that expenses incurred in transactions with nonaffiliates are unreasonable, the utility bears the burden of proving that expenses incurred in transactions with affiliates are reasonable); *Michigan Gas Utilities v. Michigan Pub. Serv. Comm'n*, 206234, 1999 WL 33454925 (Mich. App. Feb. 9, 1999) (“the utility has the burden of demonstrating that its transactions with its affiliate are reasonable”). This Court concurs. A presumption of prudence is inconsistent with the rationale for the affiliate transaction rules and with the PSC’s obligation to prevent regulated utilities from subsidizing their non-regulated operations.

The PSC counters that it always has recognized a presumption of prudence and that this Court cannot read the affiliate transaction rules to negate that presumption in the case of affiliated transactions because the affiliate transaction rules themselves state that they did not “modify existing legal standards regarding which party has the burden of proof in commission proceedings.” 4 CSR 240-40.015(6)(C) & 240-40.016(7)(C). This argument is based on a misunderstanding of the concept of burden of proof.

Missouri law sets out the burden of proof in PSC proceedings. As noted earlier,

those statutes provide that a gas corporation has the burden to prove that the gas costs it proposes to pass along to customers are just and reasonable. § 393.150.2. The PSC has no authority to adopt rules changing the burden of proof set out in the relevant statutes, and it was proper for the affiliate transaction rules to note that they did not attempt to do so. See *Kanakuk-Kanakomo Kamps, Inc. v. Dir. of Revenue*, 8 S.W.3d 94, 98 (Mo. banc 1999) (A regulation that is beyond the scope of the statute is a nullity).

A change in the presumption of prudence does not change the burden of proof set out in the PSC governing statutes. The presumption of prudence does not address the burden of proof at all. It sets out *an evidentiary presumption* created by the PSC. That standard provides that the utility's expenditures are presumed to be prudent until adequate contrary evidence is produced, at which point the presumption disappears from the case. See *Deck v. Teasley*, 322 S.W.3d 536, 539 (Mo. banc 2010) (discussing general law of presumptions). This presumption affects who has the burden of proceeding, but it does not change the burden of proof, which by statute must remain on the utility.⁶ § 393.150.2.

Further, the presumption of prudence is not even a creature of statute or of PSC regulations or rules. It was created by PSC case law. It cannot be applied inconsistently with the PSC's governing statutes and rules. As discussed above, the application of a presumption of prudence to a transaction with an affiliated company is inconsistent with

⁶ Although the above analysis is dispositive, it bears noting that the PSC has not identified any rule, regulation or decision in which it affirmatively determined prior to the adoption of the affiliate transaction rules that the presumption of prudence was applicable to affiliate transactions. For this reason also, AEM's argument is not well taken.

the PSC's statutory and regulatory obligations to review affiliate transactions. Accordingly, the presumption of prudence is inapplicable to affiliate transactions.

B. PSC Order Inappropriately Relied on Presumption of Prudence

The PSC used the presumption of prudence to shift the burden from Atmos, which should have been required to show that it complied with the affiliate transaction rules, and instead placed the burden on staff to show that Atmos did not do so.

The effect of the PSC's reliance on the presumption of prudence is particularly obvious in regard to the PSC's discussion of what would have been the fully distributed cost had Atmos obtained the gas itself rather than going through third parties. As noted earlier, the affiliate transaction rules mandate that a utility shall not provide a financial advantage to an affiliated entity. The utility provides a financial advantage if it "compensates an affiliated entity for ... goods or services above the lesser of ... [t]he fair market price ... or [t]he fully distributed cost to the [utility] to provide the ... goods or services for itself." *4 CSR 240-40.016(3)(A)*.

In all transactions that involve the purchase or receipt of goods or services from an affiliated entity, the utility must document the fair market value and the fully distributed cost, *4 CSR 240-40.016(4)(B)*,⁷ and this documentation must be kept in books and

⁷ The regulation states in relevant part:

In transactions that involve either the purchase or receipt of information, assets, goods or services by a regulated gas corporation from an affiliated entity, the regulated gas corporation shall document both the fair market price of such information, assets, goods and services and the fully distributed cost to the regulated gas corporation to produce the information, assets, goods or services for itself.

4 CSR 240-40.016(4)(B).

records with “sufficient detail to permit verification with this rule.” *4 CSR 240-40.016(5)(C)1.*⁸ The rules specifically define what figures must be included in the calculation of the fully distributed cost:

Fully distributed cost (FDC) means a methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. FDC requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated approach. Costs that cannot be directly assigned or indirectly allocated (e.g., general or administrative) must also be included in the FDC calculation through a general allocation.

4 CSR 240-40.016(1)(F).

Due to its reliance on the presumption of prudence, the PSC did not consider whether Atmos kept the required books and records and whether Atmos showed that its fully distributed costs were higher than the fair market value of the services received from its’ affiliate. Neither did it require Atmos or AEM to produce most of these records to staff or OPC.⁹ Staff did not have evidence as to how AEM prepared its bid or as to

⁸ The evidentiary requirement requires a regulated gas company maintain the following records:

1. Records identifying the basis used (e.g., fair market price, fully distributed cost, etc.) to record affiliate transactions; and
2. Books of accounts and supporting records in sufficient detail to permit verification of compliance with this rule.

4 CSR 240-40.016(5)(C).

⁹ This also led the PSC to not resolve the issue whether Atmos adequately complied with the PSC’s order compelling production of certain information in its books and records and whether the order went beyond what was required by the affiliate transaction rules. In light of the presumption of prudence, the PSC found that this discovery was not necessary. Because it is appropriate for the PSC to determine the parties’ disagreement on the meaning, effect and compliance with the motion to compel in the first instance in light of this Court’s ruling on the inappropriateness of using the presumption of prudence in affiliate transactions, this Court does not resolve this issue here but leaves it for the PSC to resolve on remand.

the sharing of costs between Atmos and AEM because it had not been able to obtain this information. This led the PSC to reject staff's proposed disallowance of \$308,733 in profits because, it found, staff did not offer "any serious argument to suggest that Atmos could provide gas-marketing services for itself cheaper if it did not use the services of gas marketing companies."

Of course, it was not up to staff to prove a negative. Whether staff thought the cost would have been cheaper if Atmos had not used the affiliate was the not the relevant question; the affiliate transaction rules put the burden on Atmos to keep records that would allow it to show it would not have been cheaper.

The PSC notes that staff did not specifically contest what Atmos' costs of providing its own gas marketing services would have been. OPC, however, did contest this issue. In its initial brief before the PSC, OPC specifically challenged the prudence of purchasing gas at a marked-up price from an affiliate rather than by Atmos acquiring the gas itself at a similar or lesser cost, stating, "Atmos' decision to purchase gas through its marketing affiliate AEM, rather than by making the gas purchases itself (and avoiding the AEM profit mark-up) is reason alone to render Atmos' purchasing decisions imprudent."

OPC argues that the PSC erred in simply presuming that, because there was a bid process, the lowest price bid must have been the lowest fair market value of the gas. It argues that the number of bidders was so low that the bid process was inadequate to identify the fair market value of the gas. OPC also specifically questions whether Atmos required AEM to bid for the same service as the other companies to whom Atmos sent an RFP in light of staff's evidence that the agreement between Atmos and AEM left blank

whether the gas was to be “firm” or “interruptible gas,” whereas other gas-supply agreements between Atmos and non-affiliates specifically identified that firm gas was required. This was an important distinction because, as noted earlier, firm gas transportation, for which delivery is guaranteed, is generally more expensive than interruptible transportation, for which delivery can be delayed if the pipeline’s capacity is completely in use.

OPC suggests that if Atmos requested proposals for firm gas transportation with the understanding that it would be sufficient if AEM bid the cost of interruptible gas transportation, it would have allowed AEM to undercut the other gas marketers’ bids. If this were what happened, the bid by AEM most certainly would not have reflected the “fair market price” of firm gas.

Similarly, OPC questioned whether the bidding process adequately established the fair market price due to the low number of conforming bids submitted by non-affiliated gas marketers. In the first RFP, only four non-affiliated gas marketers submitted conforming bids; in the second RFP, only two did so (and only if one presumes that they all bid on firm rather than interruptible gas). The record does not show whether the PSC would have considered this a sufficient response to enable it to determine the fair market value of the gas had it not relied on the presumption of prudence.

As with the question of fully distributed costs, due to its reliance on the presumption of prudence, the PSC did not develop a sufficient record on these or related issues to permit this Court to determine whether Atmos complied with the affiliate transaction rules and whether the PSC order is reasonable and lawful. This Court

remands so that the PSC can resolve these issues in the first instance based on the proper standard.

IV. CONCLUSION

The PSC erred in relying upon the presumption of prudence in rejecting staff and OPC's proposed disallowance for Atmos' Hannibal service area gas costs. The affiliate transaction rules were enacted in an effort to prevent regulated utilities from subsidizing their non-regulated activities. To presume that a regulated utility's costs in a transaction with an affiliate were incurred prudently is inconsistent with these rules.

The PSC relied heavily on the presumption of prudence in rejecting staff's proposed disallowance. This error resulted in an order that is unlawful and unreasonable. On remand, the PSC again must consider whether Atmos compensated AEM above the lesser of the fair market price or the fully distributed cost to Atmos to provide the gas for itself. To satisfy the affiliate transaction rules' requirements, Atmos must provide sufficient asymmetrical pricing documentation as to fair market value, including the bidding process, and the calculation of the fully distributed cost. The PSC's order is reversed, and the case remanded.

LAURA DENVER STITH, JUDGE

All concur

Checklist for Compliance with 4 CSR-240-40.015
[Recommended Audit Compliance Worksheet
for Affiliate Transactions Audit]

	Company Demonstrated Compliance? (Y/N)	Findings	Recommendations
1 Definitions			
A Affiliate entity			
B Affiliate transaction			
C Control			
D Corporate support			
E Derivatives			
F Fully distributed costs (FDC)			
G Information			
H Preferential service			
I Regulated gas corporation			
J Unfair advantage			
K Variance			
2 Standards			
A No financial advantage to be provided by Laclede Gas/MGE to an affiliate			
1 Laclede Gas/MGE is not to compensate an affiliate for goods or services above the lesser of:			
A Fair market price (FMP), or			
B FDC to the utility to provide the goods or services for itself			
2 Laclede Gas/MGE is not to transfer information, assets, goods, or services to affiliates below the greater of:			
A FMP or			
B FDC to the regulated gas corporation			
B No preferential treatment to be provided by Laclede Gas/MGE to an affiliate			
C Customer information to be protected			
D Laclede Gas/MGE not to deviate from rule except per sections (10)			
E Laclede Gas/MGE to explain to interested customers, that they may seek services from other/non-affiliated companies and to included protocol for compliance with this rule in its annual CAM.			
F Marketing materials of affiliates with same or similar logos as Laclede Gas/MGE are to clearly display or announce that the affiliate is not regulated by PSC			
3 Evidentiary Standards			
A Laclede Gas/MGE is to obtain competitive bids when making purchases from affiliates or demonstrate why not necessary			
B When making purchases or receipts from affiliates, Laclede Gas/MGE is to document both the FMP and FDC			
C When providing information, assets, goods, or services to affiliates, Laclede Gas/MGE must demonstrate that:			
1 Laclede Gas/MGE considered all costs incurred to complete the transaction			
2 Calculated costs at times relevant to the transaction			
3 Allocated joint and common costs appropriately			
4 Adequately determined the FMP of the information, assets, goods, or services			
D In transactions involving purchase of goods or services by Laclede Gas/MGE, Laclede Gas/MGE are to use a Commission-approved CAM which sets forth cost allocation, market valuation, and internal cost methods. CAM may use benchmarking as a market valuation method if approved by the Commission.			
4 Record Keeping			

Checklist for Compliance with 4 CSR-240-40.015
[Recommended Audit Compliance Worksheet
for Affiliate Transactions Audit]

	Company Demonstrated Compliance? (Y/N)	Findings	Recommendations
A	Laclede Gas/MGE is to maintain books, accounts, and records separate from those of affiliates.		
B	Laclede Gas/MGE is to maintain the following in electronic format and make available annually:		
1	Full and complete list of all affiliates		
2	Full and complete list of all goods and services provided to or received from affiliated entities		
3	Full and complete list of all contracts with affiliates		
4	Full and complete list of all affiliate transactions undertaken without a written contract, along with explanation of why there was no written contract		
5	Amount of all affiliate transactions by entity and account charged		
6	Basis used (e.g., FMV, FDC, etc.) to record each type of affiliate transaction		
C	Laclede Gas/MGE is to maintain the following affiliate transactions information on a calendar year basis :		
1	Records identifying basis used (e.g., FMP, FDC, etc.) to record all affiliate transactions, and		
2	Books of accounts and supporting records in sufficient detail to permit verification of compliance with this rule.		
5 Records of Affiliates			
A	Laclede Gas/MGE is to ensure its parent and other affiliates maintain books and records that at a minimum include:		
1	Documentation of costs associated with affiliate transactions incurred by parent or affiliate and charged to Laclede Gas/MGE		
2	Documentation of methods used to allocate and/or share costs between affiliates, including other jurisdictions and/or corporate divisions		
3	Description of costs not subject to allocation to affiliate transactions and documentation supporting nonassignment of costs to affiliate transactions		
4	Description of types of services centralized functions (including corporate) provided to any affiliate or division accessing Laclede Gas/MGE's contracted services or facilities		
5	Names and job descriptions of Laclede Gas/MGE employees who transferred to a nonregulated affiliated entity		
6	Evaluations of the effect on reliability of services provided by Laclede Gas/MGE resulting from access to regulated contracts and/or facilities by affiliates		
7	Policies regarding availability of customer information and access to services available to nonregulated affiliated entities desiring use of Laclede Gas/MGE's contracts and facilities		
8	Description of and supporting documentation related to use of derivatives that may be related to Laclede Gas/MGE operations, even though obtained by parent or other affiliate		
6 Access to Records			
A	Laclede Gas/MGE shall make available books and records of its parent and any other affiliate when required in application of this rule		
B	Commission has authority to:		

Checklist for Compliance with 4 CSR-240-40.015
[Recommended Audit Compliance Worksheet
for Affiliate Transactions Audit]

	Company Demonstrated Compliance? (Y/N)	Findings	Recommendations
1	Review, inspect, and audit books, accounts and other records kept by Laclede Gas/MGE or affiliate for the purpose of ensuring compliance with this rule and make findings available to the Commission		
2	Investigate operations of Laclede Gas/MGE or affiliates and their relationship to one another to ensure compliance with this rule		
C	This rule does not modify existing legal standards regarding which party has the burden of proof in commission proceedings		
7 Record Retention			
A	Records required under this rule are to be maintained by Laclede Gas/MGE for a minimum of 6 years		
8 Enforcement			
A	The Commission may apply any remedy available to it to enforce these standards or any order of the Commission regarding these standards.		
9 Training			
	Laclede Gas/MGE is to train and advise its personnel as to the requirements and provisions of this rule to ensure compliance		
10 Variances			
A	Variance to this rule may be obtained by compliance with the following:		
1	Laclede Gas/MGE may request a variance by		
2	Laclede Gas/MGE may engage in affiliate transactions not in compliance with subsection 2(A) of this rule only if to the best of its knowledge and belief, compliance would not be in the best interests of its regulated customers and it complies with the procedures required by (10)(A)2.A. and (10)(A)2.B		
A	Laclede Gas/MGE is to comply with all reports and record retention requirements for each affiliate		
B	Laclede Gas/MGE is to file notice of noncomplying affiliate transaction with the secretary of the Commission and the OPC within ten days of noncomplying affiliate transaction. The notice is to include a detailed explanation of why Laclede Gas/MGE believes the affiliate transaction was in the best interests of the regulated customers. When filing its annual CAM, Laclede Gas/MGE is to provide the Commission a list of all noncomplying affiliate transactions which occurred between the last filing and current filing. Affiliate transactions submitted under this section are interim until ruled on by the Commission.		
11 Disclaimer			
	This rule and actions of the Commission under this rule are not to be construed as approvals or exemptions violating antitrust laws.		

Ryan Pfaff

From: Shemwell, Lera <Lera.Shemwell@ded.mo.gov>
Sent: Tuesday, August 22, 2017 4:20 PM
To: Spangler, Marcia A.; Zucker, Rick E.; Poston, Marc; Williams, Hampton; Ara Azad; Ryan Pfaff
Cc: Buck, Glenn W.; Keathley, Lew E.; Noack, Michael; Michael Pendergast; Lobser, Eric E.
Subject: RE: DR 7000 Set

All,
Below are listed almost 20 DRs that are substantially overdue.
Your proposed date to respond on some of these was yesterday.
As you are aware testimony filing is imminent.
Please immediately and fully respond to all DRs.
Thank you .

Lera Shemwell

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573-751-5565

lera.shemwell@ded.mo.gov

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<i>DR No</i>	<i>Sent Date</i>	<i>Days Outstanding</i>	<i>Response Due Date</i>	<i>Co Objection - Proposed Due Date</i>
7087	Friday, June 30, 2017	53	Thursday, July 20, 2017	
7088	Friday, June 30, 2017	53	Thursday, July 20, 2017	
7089	Friday, June 30, 2017	53	Thursday, July 20, 2017	
7091	Friday, June 30, 2017	53	Thursday, July 20, 2017	
7092	Friday, June 30, 2017	53	Thursday, July 20, 2017	
7099	Friday, July 21, 2017	32	Thursday, August 10, 2017	Monday, August 21, 2017
7100	Friday, July 21, 2017	32	Thursday, August 10, 2017	Monday, August 21, 2017
7101	Friday, July 21, 2017	32	Thursday, August 10, 2017	Monday, August 21, 2017
7113	Friday, July 21, 2017	32	Thursday, August 10, 2017	Monday, August 21, 2017
7116	Friday, July 21, 2017	32	Thursday, August 10, 2017	Monday, August 21, 2017
7117	Friday, July 21, 2017	32	Thursday, August 10, 2017	Monday, August 21, 2017
7118	Friday, July 21, 2017	32	Thursday, August 10, 2017	Monday, August 21, 2017
7119	Friday, July 21, 2017	32	Thursday, August 10, 2017	Monday, August 21, 2017
7122	Friday, July 21, 2017	32	Thursday, August 10, 2017	Monday, August 21, 2017
7125	Friday, July 21, 2017	32	Thursday, August 10, 2017	Monday, August 21, 2017
7135	Thursday, July 27, 2017	26	Tuesday, August 15, 2017	
7136	Thursday, July 27, 2017	26	Tuesday, August 15, 2017	

Ryan Pfaff

From: Hyneman, Charles <Charles.Hyneman@ded.mo.gov>
Sent: Tuesday, July 18, 2017 12:00 PM
To: 'Buck, Glenn W.'; Lobser, Eric E.; Noack, Michael
Cc: Marke, Geoff; Ara Azad; Ryan Pfaff
Subject: RE: Meeting on Corporate Allocations, affiliate costs and Flaherty direct

Glenn, I understand the discovery concerns with AZP have been addressed for the time being. Therefore, I am withdrawing my request for this specific discovery meeting for now. I do like your suggestion of a possible conference call between you and me in the future. Maybe we can touch base next week or the following week on this issue to see if progress is being made with AZP DRs.

For example, most of Spire's DR responses to AZP DRs are just references to other DR responses with no narrative clarification regarding why or how the company believes the requested information was actually provided in the referenced DR response and the referenced DR was directly responsive to the current DR.

I personally consider these "responses" to be non-responsive. I believe it is reasonable that the only time it is appropriate to reference another response without a narrative explanation is when the referenced DR asked for identical information—i.e., that the requests are duplicative. We may have some questions on the DRs received to date that just referenced other DRs.

I hope you understand this concern and we are able to resolve this issue informally. Can Laclede provide a narrative description of specifically where (i.e. exact location(s) in the referenced DR such as the document, page number, spreadsheet line number, etc.) the information requested is provided in the responses it referenced? That would be helpful and may avoid future discovery issues.

Chuck

From: Buck, Glenn W. [mailto:Glenn.Buck@spireenergy.com]
Sent: Tuesday, July 18, 2017 10:29 AM
To: Hyneman, Charles; Lobser, Eric E.; Zucker, Rick E.; Poston, Marc; Noack, Michael
Cc: Marke, Geoff; 'Ara Azad'; 'Ryan Pfaff'
Subject: RE: Meeting on Corporate Allocations, affiliate costs and Flaherty direct

Chuck,

There seems to be some miscommunication occurring. It is my understanding that Eric and Geoff spoke and that your meeting request was deemed perhaps a bit premature. It was represented to me that Geoff was going to talk to you about providing specific examples where you thought the responses were not fully responsive and give them to us so we might be able to bridge a gap. Regardless, a meeting next week would have been out of the question as we have third quarter BOD meetings on those days which makes meetings (especially long ones) much more difficult, if not possible, to schedule.

I am not sure if a conference call to discuss this may be in order. This may be something that Rick and Marc can help facilitate.

Hope that clears up some of the confusion.

From: Hyneman, Charles [<mailto:Charles.Hyneman@ded.mo.gov>]
Sent: Tuesday, July 18, 2017 10:12 AM
To: Buck, Glenn W. <Glenn.Buck@spireenergy.com>
Cc: Marke, Geoff <geoff.marke@ded.mo.gov>; 'Ara Azad' <aazad@AZPConsulting.com>; 'Ryan Pfaff' <rpfaff@AZPConsulting.com>
Subject: RE: Meeting on Corporate Allocations, affilaite costs and Flaherty direct

Glenn. I sent this email last Thursday and did not see a response. I will send you an agenda no later than Thursday this week. Have you selected a meeting date and time yet? I request that the time be 10 am or later as I will be driving in from Jefferson City. Thanks

Chuck

From: Hyneman, Charles
Sent: Thursday, July 13, 2017 11:40 AM
To: 'Buck, Glenn W.'
Cc: Marke, Geoff; Ara Azad; 'Ryan Pfaff'
Subject: Meeting on Corporate Allocations, affilaite costs and Flaherty direct

Glenn, Geoff and I are in continuing discussions with Ara and Ryan concerning Laclede's responses to AZP's data requests. I understand you are working on the particular issue with DR 7000. Geoff spoke with Rick Zucker, Mike Pendergast and Eric Lobser yesterday and the indicated you will have the responses no later than today.

OPC and AZP have concerns about many of Laclede's responses to AZP DRs. Given this concern, I will be compiling a list of AZP DRs that we have specific concerns and including that list in an agenda for a meeting we would like to have with Laclede.

I will send this agenda to you next week and request that we have a meeting at Laclede's HQ in St. Louis on July 26th or July 27th, whichever dates works best for you. We request that Mr. Flaherty and all other people who provided significant work on Mr. Flaherty's testimony and the allocations issue in this case be present. It is my goal to take as much time as we need at this meeting to answer all the questions we have.

I will be attending this meeting in St. Louis as well as Geoff Marke. Ara and Ryan of AZP will be participating through phone conference.

Could you please arrange for this meeting and let me know as soon as possible the date you select? I would like to emphasize that it is very important for Mr. Flaherty to be present.

Thanks,

Chuck