

**Exhibit No.:**

**Issue(s):**

**Witness/Type of Exhibit:**

**Sponsoring Party:**

**Case No.:**

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CHP/

AMR MIU/

ISRS

Robinett/Surrebuttal

Public Counsel

GR-2017-0215

GR-2017-0216

## **SURREBUTTAL TESTIMONY**

**OF**

**JOHN A. ROBINETT**

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

\*\*

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**Denotes Confidential Information  
that has been Redacted**

November 21, 2017

**Public Version**

**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   )

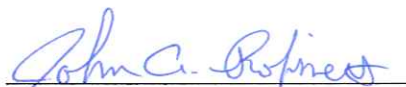
In the Matter of Laclede Gas Company     )  
d/b/a Missouri Gas Energy's Request to     )                   Case No. GR-2017-0216  
Increase Its Revenues for Gas Service     )

**AFFIDAVIT OF JOHN A. ROBINETT**

STATE OF MISSOURI     )  
   )     ss  
COUNTY OF COLE     )

John A. Robinett, of lawful age and being first duly sworn, deposes and states:


1. My name is John A. Robinett. I am a Utility Engineering Specialist for the Office of the Public Counsel.
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 testimony are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
John A. Robinett  
Utility Engineering Specialist

Subscribed and sworn to me this 21<sup>st</sup> day of November 2017.



JERENE A. BUCKMAN  
My Commission Expires  
August 23, 2021  
Cole County  
Commission #13764037

  
\_\_\_\_\_  
Jerene A. Buckman  
Notary Public

My Commission expires August 23, 2021.

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**SURREBUTTAL TESTIMONY  
OF  
JOHN A. ROBINETT  
LACLEDE GAS COMPANY  
MISSOURI GAS ENERGY**

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

1 **Q. Please state your name and business address.**

2 A. John A. Robinett, PO Box 2230, Jefferson City, Missouri 65102.

3 **Q. By whom are you employed and in what capacity?**

4 A. I am employed by the Missouri Office of the Public Counsel (“OPC”) as a Utility Engineering  
5 Specialist.

6 **Q. Are you the same John A. Robinett that filed direct and rebuttal testimony on behalf of**  
7 **the OPC in this proceeding?**

8 A. Yes.

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

10 A. The purpose this testimony is to address the Division of Energy (“DE”) proposal that  
11 ratepayers fund a \$5.1 million pilot program proposal for ten combined heat and power  
12 (“CHP”) projects as found in the direct and rebuttal testimony of DE”) witness Jane  
13 Epperson. I also discuss the Staff’s position on CHP. The OPC’s recommendation is the  
14 Commission deny DE’s proposal for all ratepayers to fund this pilot program. Missouri  
15 already has twenty-three CHP applications/test cases. An additional ratepayer-funded  
16 program is not necessary.

17 I also address Laclede’s request that automated meter reading (“AMR”) meter interface  
18 unit (“MIU”) technology be placed into service and into the Company’s rate base. I address  
19 the appropriate depreciation rate be applied to these units if they are included in rates.

20 Finally, I address the Western District Court of Appeals’ Opinion in WD80544, *In the*  
21 *Matter of the Application of Laclede Gas Company to Change its infrastructure System*  
22 *Replacement Surcharge in its Missouri Gas Energy Service Territory and in the Matter of*  
23 *the Application of Laclede Gas Company to Change its Infrastructure System Replacement*

1           *Surcharge in its Laclede Service Territory*. Opinion filed: November 21, 2017 attached to  
2           this testimony as Schedule JAR-S-1.

3   **Q.    Would you summarize Office of Public Counsel’s (“OPC”) position regarding DE’s**  
4   **proposal on CHP?**

5   A.    OPC recommends the Commission reject DE’s proposal as it relates to ratepayer-funded  
6           expenditures of a CHP pilot program. According to Staff Data Request No. 0480, DE’s  
7           proposed program is, “still in the conceptual phase.” DE’s CHP pilot program  
8           recommendation lacks important details, including the term of the project and metrics for  
9           evaluation of the pilot.

10 **Q.    What is OPC’s position on Laclede’s proposal on its MIUs?**

11 A.    OPC has not yet taken a formal position related to the Company’s July 1, 2017 purchase  
12           of the MIUs, which were already attached to Laclede’s meters. OPC is still seeking  
13           discovery to determine whether this is a reasonable cost to include in customers’ rates in  
14           light of Laclede witness C. Eric Lobser’s depreciation request. (Lobser rebuttal page 8:19-  
15           22).

16 **COMBINED HEAT AND POWER**

17 **Q.    What are Staff’s concerns with DE’s proposed CHP program?**

18 A.    Staff raises concerns about the lack of specificity and detail in DE’s proposed CHP pilot  
19           program. Staff notes that critical factors are missing from the proposal including the lack  
20           of a specific time period for the term of the pilot project and, perhaps more importantly,  
21           the lack of metrics for evaluation of the success or failure of the project. (Eubanks rebuttal  
22           page 9:9-16).

23           Staff also raises concern that the pilot program could adversely affect electric utilities’ sales  
24           and revenues, when the electric utilities that are not interveners in this rate case. (Eubanks  
25           rebuttal, page 8:3-13) Finally, Staff comments that the pilot may include prohibited  
26           promotional practices. (Eubanks rebuttal page 5:21-22 – page 6:1-14)

1 **Q. Does OPC share Staff’s concerns with respect to CHP?**

2 A. Yes. OPC shares Staff’s concern that DE’s proposal lacks details and any evaluation  
3 metrics. According to DE’s response to Staff Data Request No. 0480, DE’s CHP proposal  
4 is, “still in the conceptual phase.” Further, OPC shares Staff concerns that DE’s CHP pilot  
5 program may conflict with Commission Rules, specifically the Promotional Practices  
6 Chapter 14. OPC witness Lena Mantle’s surrebuttal testimony describes the background of  
7 the promotional practices chapter. The same load building and lack of evaluation concerns  
8 that Ms. Mantle has with energy-efficiency programs apply to DE’s proposed CHP  
9 program.

10 **Q. You mention evaluation metrics, does DE address the requirements of Chapter 14**  
11 **rules to this pilot CHP proposal?**

12 A. No. These rules require a tariff sheet filing that describes the details of the program, the  
13 evaluation plans for a pilot program or the results of the evaluation that show the program  
14 is cost-effective for the utility.<sup>1</sup>

15 **Q. Is the CHP pilot program a cost-effective or a prudent use of ratepayer funds?**

16 A. No. While Chapter 14 states: “Nothing contained in this chapter shall be construed to prohibit  
17 the provision of considerations that may be necessary to acquire cost-effective demand-side  
18 resources,” DE’s CHP proposal would allow the Company to provide consideration in the  
19 form of an incentive payment to persuade customers to use natural gas to generate electricity  
20 making it a load building program. The program actually goes further than just being a load  
21 building program by requiring significant ratepayer-funded subsidization while providing  
22 virtually no benefits to non-CHP-using ratepayers.

23 In addition, DE has not demonstrated CHP is cost effective. Please see the Surrebuttal  
24 testimony of OPC witness Dr. Geoff Marke for further discussion of Economic Development  
25 Rider: Combined Heat and Power.

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<sup>1</sup> 4 CSR 240-3.255(2)(B)3.

1 **Q. Does DE witness Epperson portray the CHP program as a demand-side resource?**

2 A. Yes, at page 5 lines 8-10, of her rebuttal, she expresses the opinion the proposed pilot  
3 program does not violate the promotional practices rule because it may be necessary to  
4 acquire cost-effective demand-side resources. I disagree.

5 **Q. How does 4 CSR 240-14.010(6) define demand-side resources?**

6 A. It reads:

7 (E) Demand-side resource means any inefficient energy-related choice that  
8 can be influenced cost-effectively by a utility. The meaning of this term shall  
9 not be construed to include load-building programs. (emphasis added)

10

11 **Q. Would DE's CHP pilot program result in load building for a natural gas company?**

12 A. Yes. According to 4 CSR 240-14.010(6) definition of load building.

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

22 In rebuttal testimony page 5 lines 1-4, DE witness Epperson admits: "The use of CHP can  
23 result in the loss of physical load by an electric utility to the benefit of a natural gas  
24 company, provided that the CHP unit is fueled by natural gas."

25 **Q. Is DE masquerading this load-building CHP program as a demand-side program to**  
26 **gain acceptance of asking customers to pay for the program?**

27 A. Yes. "Load building" is a more accurate definition of this program than "demand-side."

28 **Q. Does OPC have concerns related to financing included in DE's CHP proposal?**

1 A. Yes. In response to Staff Data Request No. 0480, DE states: “The proposed CHP Pilot  
2 Project could provide clarity regarding what incentives the utility is willing to cover, as  
3 well as, address the important financing component.” 4 CSR 240-14.010(6) definitions  
4 reads:

5 (G) Financing shall include acquisition of equity or debt interests, loans,  
6 guarantees of loans, advances, sale and repurchase agreements, sale and  
7 leaseback agreements, sales on open account, conditional or installment  
8 sales contracts or other investments or extensions of credit;

9 The Commission should also reject the proposal for the Company to finance CHP  
10 installations. In addition to DE’s failure to provide necessary detail and evaluation measures  
11 and the fact the proposal is not cost effective, it is worth noting, as DE’s witness Epperson  
12 highlights in Table 1, page 6 of her direct testimony, there are already twenty-three CHP  
13 installations in operation in Missouri without the benefit of Laclede or MGE ratepayer  
14 subsidized funding. With this many applications in place, it seems the test “pilot” phase for  
15 CHP implementation is over.

16  
17 **LACLEDE’S METER INTERFACE UNITS PURCHASE**

18 **Q. When was OPC made aware of the purchase of the MIUs?**

19 A. OPC became aware of this purchase in Company witness C. Eric Lobser’s rebuttal  
20 testimony filed October 17, 2017.

21 **Q. Did the Company purchase the MIUs below market value?**

22 A. At this time, OPC does not have the information necessary to determine market value. OPC  
23 has issued data requests to verify this purchase and, if possible, will have a  
24 recommendation in its position statements. OPC has issued data requests related to the  
25 service life of the device original cost and estimated remaining life of the devices in order  
26 to determine how “good” a deal Laclede got for its customers.



1 **Q. Why has there been a decrease in monthly read costs for the MIUs?**

2 A. Based on review of the Amendment sheet to the Automated Meter Reading Services  
3 Agreement, specifically No. 3 *Read & Asset Fees*, Landis and Gyr are no longer going to  
4 charge Laclede an asset fee, since Laclede bought the asset, or a monthly MIU fee.  
5 Essentially Laclede is no longer going to pay rental fee/capital leasing fee since it  
6 purchased the units outright from Landis and Gyr.

7 **Q. Over what time period is the Company proposing to amortize the value of the AMR**  
8 **MIU's?**

9 A. The Company is proposing to amortize the units over the projected useful remaining life  
10 of seven years<sup>2</sup>.

11 **Q. Is seven years the appropriate time to recover this investment over?**

12 A. The Company has not provided the information necessary to make this determination. The  
13 Company supplied a depreciation study with plant in service and reserve data as of  
14 September 30, 2016 in the context of this case, and stated in direct testimony that it  
15 recommended current ordered depreciation rates to remain in effect. Now in rebuttal  
16 testimony, a "new" type of asset was acquired as part of a "good deal" supposedly cheaper  
17 than market value. The Company provides no documentation to substantiate this claim. In  
18 addition it did not provide any analysis of standard life of this type of asset or any cost of  
19 removal or salvage that may be expected for the asset.

20 **Q. Is the per-read cost as described by Company a static reduction in price?**

21 A. No. The amendment to the services agreement lays out a step increase that occurs July 1,  
22 2020. Additionally there is no information as to how long this step remains in effect or if  
23 additional steps occur sometime down the road.

24 **Q. Was this step increase in per-read charge included in Company's analysis of cost**  
25 **reductions?**

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<sup>2</sup> Lobser Rebuttal p. 9 lines 5-10.

1 A. OPC did not find in the analysis provided by Laclede showing this change in the per-read  
2 charge rates.

3 **INFRASTRUCTURE REPLACEMENT PROGRAM (ISRS)**

4 **Q. Do you have concerns with the Companies' current replacement approach?**

5 A. Yes. My concern is Laclede is including in its ISRS the cost of replacing plastic mains and  
6 service lines that are not worn out or deteriorated. OPC's position is that these lines should  
7 not be included in ISRS because they were not show to be worn out or deteriorated.

8 **Q. What concerns do you have with other types of pipe replacement?**

9 A. My concern is that: [t]he company does not generally perform testing on retired pipes to  
10 determine the level or degree of worn out or deteriorated condition because there is no  
11 business justification for doing so. (Response to OPC DR 8535)

12 Further, when asked how the Companies test to determine if mains or service lines are  
13 deteriorated, the Company response was that it assumed these mains are worn out or  
14 deteriorated because "[m]ain materials, such as cast iron, bare steel, and legacy plastics  
15 have demonstrated a higher likelihood of material failure, and therefore are generally  
16 considered to be in worn out or deteriorated condition." (Response to OPC DR 8536)

17 **Q. Is it your opinion these replacements do not qualify for inclusion in ISRS?**

18 A. Yes.

19 **Q. What is the basis for your opinion?**

20 A. In addition to the DR responses noted above, I also was informed by counsel that on  
21 November 21, OPC prevailed in its appeal in WD80544, *In the Matter of the Application*  
22 *of Laclede Gas Company to Change its infrastructure System Replacement Surcharge in*  
23 *its Missouri Gas Energy Service Territory and in the Matter of the Application of Laclede*  
24 *Gas Company to Change its Infrastructure System Replacement Surcharge in its Laclede*  
25 *Service Territory.* (See Attachment 1)

1 **Q. Do you have any other concerns with Laclede's and MGE's ISRS filings?**

2 A. Yes. \*\*

3  
4 \*\*

5 Also, neither Company keeps records sufficient to document the condition of the  
6 pipelines they are replacing.

7 **Q. Do you have a recommendation for the Commission?**

8 A. Yes. OPC recommends the Commission require the Companies to keep records sufficient to  
9 document the condition of the pipelines they are replacing. OPC is willing to work with the  
10 Companies to determine what record keeping would be sufficient to meet the requirement of  
11 the statute.

12 **CONCLUSION**

13 **Q. What is OPC recommendation related to DE's CHP pilot program?**

14 A. OPC asks the Commission to reject DE proposed CHP pilot program. DE by its own  
15 admission shows this plan is not properly sought or developed and potentially violates  
16 Chapter 14 prohibited promotional practices.

17 **Q. What is OPC's recommendation related to Laclede's request for inclusion of AMR MIU  
18 technology?**

19 A. OPC has outstanding data requests at the time of this filing; OPC does not have the data or  
20 information at this time to provide a recommendation to the Commission related to the  
21 AMR MIU.

22 **Q. What is OPC's recommendation related to ISRS?**

23 A. OPC recommends the Commission require the Companies to keep records sufficient to  
24 document the condition of the pipelines they are replacing.

1 | **Q. Does this conclude your surrebuttal testimony?**

2 | A. Yes, it does.



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

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

WD80544

Opinion filed: November 21, 2017

**APPEAL FROM THE PUBLIC SERVICE COMMISSION**

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

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

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

### **FACTUAL AND PROCEDURAL HISTORY**

The Commission is a state administrative agency that regulates public utilities. §§ 386.040; 386.250.<sup>1</sup> The Commission's Staff acts separately and is a party to all cases before the Commission. *In re Laclede Gas Co.*, 504 S.W.3d 852, 856 (Mo. App. W.D. 2016). The OPC represents the public in all proceedings before the Commission and all appeals of Commission orders. § 386.710. Laclede is a "gas corporation" and "public utility" as defined in section 386.020 and is engaged in the business of distributing and transporting natural gas to customers within its Laclede Gas service territory in eastern Missouri as well as in MGE's service territory in western Missouri. Laclede is subject to the jurisdiction of the Commission as provided in Chapters 386 and 393.

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

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

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

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

### **STANDARD OF REVIEW**

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

### **DISCUSSION**

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

Finally, the Commission’s comment that “not allowing recovery of the portions of the main replacement projects that incidentally consist of plastic pipe would be a disincentive to the gas utilities to replace deteriorated pipelines containing portions of plastic” carries no weight and reflects a misapprehension of the breadth of ISRS-eligibility. The purpose of an ISRS surcharge is to allow a utility to “timely recover its costs for certain *government-mandated* infrastructure projects without the time and expense required to prepare and file a general rate case[.]” *In re Laclede Gas Co.*, 417 S.W.3d 815, 821 (Mo. App. W.D. 2014) (emphasis added). ISRS-eligibility under section 393.1009(5)(a) is dependent on a project being imposed on a gas utility by a government-mandated safety requirement, and it is the existence of that obligation that provides the only motivation or incentive relevant to our analysis.

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

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

### **CONCLUSION**

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



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EDWARD R. ARDINI, JR., JUDGE

All concur.

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and

GR-2017-216

LACLEDE GAS COMPANY  
MISSOURI GAS ENERGY

Schedule JAR-S-2

has been deemed

“Confidential”

in its Entirety