BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Office of the Public Counsel,	)	
	)	
Complainant,	)	
	)	
v.	)	**Case No. GC-2016-0297**
	)	
Laclede Gas Company, and Missouri Gas Energy,	)	
	)	
Respondents.	)	

MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION TO DISMISS;

ALTERNATIVE REQUEST FOR STAY OF THE COMPLAINT CASE;

RESPONSE TO OPC'S MOTION FOR RECONSIDERATION OF ORDER REGARDING MOTION TO COMPEL

COME NOW Respondents Laclede Gas Company ("Laclede" or "Company"), including its Laclede Gas (herein so called) operating unit, and Missouri Gas Energy, also an operating unit of Laclede ("MGE"), and submit this Motion asking the Commission to reconsider its July 12 Order denying Respondents' motion to dismiss or, alternatively, to stay the Complaint, and to deny OPC's motion to reconsider the Order Regarding Motion to Compel. In support thereof, Respondents respectfully state as follows:

Reconsideration of Order Denying Motion to Dismiss

1. In denying Respondents' motion to dismiss, the Commission relied on the argument that it does not insist on compliance with technical pleading rules and construes its authority liberally. Therefore, the Commission concluded that the sole fact that OPC's complaint pertained to utility earnings – a subject that falls under Commission jurisdiction – was sufficient to overcome a motion to dismiss.

2. In reply, Respondents present a public policy argument not previously considered by the Commission, as a reason for the Commission to reconsider its order. As explained below, as opposed to general complaint filings, earnings complaints are special cases that carry certain restrictions, and the Commission should evaluate special complaints more judiciously. Second, the rule that allows substantial compliance with pleading rules and liberal construction to suffice is intended to aid utility customers or patrons, not a regular, knowledgeable, and sophisticated participant in Commission proceedings like OPC.

3. The General Assembly decided that filing an earnings complaint is a serious matter that is not to be taken lightly. This is evidenced by the requirement that 25 people must sign off to bring an earnings complaint.[1] As the Commission stated in a 2003 decision:

> [I]f the complaint goes to the reasonableness of rates then certain extra restrictions apply. The unmistakable purpose of the legislature was to restrict such proceedings, not facilitate them...The legislature has made a public policy determination that utilities be insulated to a certain degree from rate challenges. The policy benefits all ratepayers, who must after all reimburse the utility through rates for the costs incurred in defending meritless actions.[2]

While 25 citizens must agree to bring a complaint, OPC is given the privilege of being able to commence a complaint case by itself. In exchange for that privilege, OPC should assume responsibility for preparing a substantive, well-supported case before filing such a complaint.

4. The Commission requires extensive minimum filing requirements for gas utilities to commence rate cases.[3] At the time it files for a rate increase, the gas utility must: submit its revised tariffs with rate schedules for all customer classes and changes to rules and regulations, along with its direct testimony; file a letter that includes several attachments of general

[1] 386.390.1 RSMo
[2] ***Christ v. Southwestern Bell Tel. Co.***, 2003 WL 21276361, Case No. TC-2003-0066, Order dated February 4, 2003.
[3] 4 CSR 240-2.065, 3.030 and 3.235

information pertaining to the rate increase; and submit a depreciation study, database and property unit catalog. These requirements exist despite the fact that the General Assembly did not subject general rate cases to restrictions. While one may not expect a party bringing a complaint case to file this level and volume of documentation, the fact that the General Assembly did intend to discourage a hasty, careless or injudicious earnings complaint makes it incumbent upon the Commission to require a complainant to file a substantive pleading before commencing such a case. OPC's bare bones complaint, devoid of facts that support overearning, and alleging unreasonable rates despite an ROE that falls within the zone of reasonableness, simply does not meet the kind of hurdle intended by the General Assembly.

5. The principle that the Commission does not insist on technical pleading rules, and construes its authority liberally, arises from Section 386.610 RSMo, the "substantial compliance" rule. Section 386.610 is meant to accommodate two parties: the Commission and customers. It provides that, in issuing orders, the Commission is only expected to substantially comply with Chapter 386. With respect to customers, they are to be allowed some margin of error in order to promote the public welfare, efficient facilities and substantial justice "between patrons and public utilities."

6. The case cited by the Commission in its order in support of this concept,[4] and similar cases, are intended to assist generally unsophisticated customers who are not normally involved in the regulatory process, like retirement homes and laundries. OPC does not qualify under Section 386.610 as it is neither the Commission nor a patron. Instead, OPC is a regular party to Commission cases and should be held to a higher standard in complying with basic pleading rules. In other words, OPC should have to at least state a serious, substantive and

[4] *State ex. rel. Friendship Village v. PSC*, 907 S.W.2d 339, 345-46 (Mo. App. 1995).

legitimate claim to trigger the Commission earnings complaint process, not just mention a subject that comes under the Commission's regulatory umbrella.

7. Subject to the special complaint standards in Section 386.390.1, the Chairman is correct when, in discussing this case in an Agenda Meeting, he stated that surviving a motion to dismiss is a low hurdle. But it is a hurdle nonetheless. That's why Commission Rule 4 CSR 240-2.070(7) exists – to provide for cases to be dismissed when a complainant fails to state a claim. Having a hurdle so low as to be non-existent effectively moots that rule.

8. The dismissal standard requires a complainant to state well-pleaded facts and not conclusions. Liberal construction of Commission pleading rules does not excuse OPC's failure to make proper allegations.

9. The July 12 Order errs in concluding that OPC need only mention a topic that comes under Commission jurisdiction to establish a claim. As stated above, Section 386.610 and the doctrine of liberal construction applies to help unsophisticated customers have their rights adjudicated. It does not comprise substantial compliance for OPC.

10. In the end, OPC should have some solid facts on which to base a claim before it can begin a case that otherwise requires 25 signatures. OPC's Complaint with an alleged ROE that is both conclusory and falls within the zone of reasonableness does not clear that hurdle. Public Counsel's irresponsible filing and pursuit of a complaint without sufficient facts will drain Company resources, distract the Company from its business of serving customers and increase expenses for the taxpaying gas consumer. Given the lack of factual evidence of overearning, the complaint is a significant use of resources better focused elsewhere. This is especially true where, in a case such at this, other statutory provisions already mandate that rate cases for both Laclede Gas and MGE be filed in the near future. For all of these reasons, OPC's Complaint should be dismissed.

Filing of Rate Cases and Stay of Complaint Case

11. At the July 12 Agenda meeting, Chairman Hall discussed the likelihood that earnings complaints morph into rate cases, and posited whether it may be more efficient to stay the Complaint case while Laclede prepares a rate case. Laclede appreciates the Chairman's creativity and initiative in promoting efficiency. In fact, in the past legislative session, Laclede proposed changes to the ISRS law that would have expanded the artificial timeline for filing rate cases in order to reduce unnecessary rate cases and their associated costs.

12. In the absence of legislative changes, the Company must soon begin the long, detailed process of properly preparing and filing rate cases for both Laclede and MGE, as required under the existing ISRS statute's timeline. In connection with and addition to preparing revised tariffs covering rate schedules along with rules and regulations, and the filing letter and attachments that must be filed on Day 1 as discussed above, this process includes the preparation of various schedules and studies such as a cash working capital lead-lag study, a depreciation study, a class cost of service analysis, and the preparation of various normalizations, annualizations and adjustments, and retention of expert witnesses for specific topics, along with review by counsel. Much of this information then funnels into the preparation of direct testimony that is also a Day 1 filing. Laclede typically files testimony for 10 or more witnesses. Since the MGE acquisition agreement requires Laclede to file simultaneous rate cases for Laclede Gas and MGE, all of these efforts will have to be performed for two utilities.

13. The preparation and filing of these rate cases would coincide with and duplicate the Company's efforts to address the unsubstantiated Complaint Case. The significant level of effort, time and resources demanded of the Company would be an unwarranted distraction from providing more focus on our operations and customers. In addition to duplicating the Company's efforts, such back-to-back cases would drive inefficient efforts for other parties as

well. Therefore, if the Commission declines to dismiss the Complaint, we believe it would make sense to mitigate these duplicative efforts, added distraction, and additional customer expense by granting a stay of the Complaint case. In exchange, the Company would commit to filing rate cases for both Laclede and MGE no later than March 17, 2017.

Reply to OPC Motion for Reconsideration of Discovery Order

14. In its July 18 motion for reconsideration, OPC asks the Commission to not allow Laclede to hold all of 124 DR responses until the 60 day due date, but instead to provide answers as they become available.[5] Respondents point out that they have stated repeatedly, in both letters to OPC and in pleadings, that they will do exactly that – provide responses during the 60 day period as they are ready, with the final DRs delivered by the end of the period. Respondents repeat that intention here and, in fact, anticipate providing more DR responses as early as next Monday or Tuesday.

15. OPC's facts are also incorrect, as they are missing about 30 DRs from the DR chart on page 3 of OPC's motion. This includes 11 more DRs Laclede received on July 5, to which it has agreed to respond by the same due date set by the Commission for the previous DRs.

16. OPC has raised nothing new in its motion for reconsideration except displeasure with the Order Regarding Motion to Compel. OPC's motion should be denied on this ground alone. However, having already provided OPC a wealth of information, including their entire general ledgers in electronic form, and having here agreed to the primary request in OPC's motion, Respondents request that the motion be denied on this ground also.

17. Respondents clarify that their compliance with the Commission's July 12 Order Regarding Motion to Compel and provision of DR responses, should in no way be construed as a

[5] See OPC July 18 Motion, paragraph 6.

modification of their position that the Complaint should be dismissed or stayed. For the reasons stated above, Respondents maintain that the Commission should dismiss the Complaint, or hold it in abeyance pending the filing of Laclede and MGE rate cases.

WHEREFORE, for the foregoing reasons, Respondents respectfully request that the Commission reconsider its denial of Respondents' motion to dismiss, or hold the Complaint in abeyance as requested herein, and deny OPC's motion to reconsider the Order Regarding Motion to Compel.

Respectfully Submitted,

/s/ Rick Zucker

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the parties of record in this case on this 22nd day of July, 2016 by United States mail, hand-delivery, email, or facsimile.

/s/ Marcia Spangler