

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

In the Matter of the Application of Laclede Gas	)	
Company to Change its Infrastructure System	)	<b>File No. GO-2016-0332</b>
Replacement Surcharge in its Missouri Gas	)	Tariff No. YG-2017-0148
Energy Service Territory	)	

In the Matter of the Application of Laclede Gas	)	
Company to Change its Infrastructure System	)	<b>File No. GO-2016-0333</b>
Replacement Surcharge in its Laclede Gas	)	Tariff No. YG-2017-0147
Service Territory	)	

In the Matter of the Application of Laclede Gas	)	
Company to Change its Infrastructure System	)	<b>File No. GO-2017-0201</b>
Replacement Surcharge in its Missouri Gas	)	<b>Tariff No. YG-2017-0157</b>
Energy Service Territory	)	

In the Matter of the Application of Laclede Gas	)	
Company to Change its Infrastructure System	)	<b>File No. GO-2017-0202</b>
Replacement Surcharge in its Laclede Gas	)	<b>Tariff No. YG-2017-0156</b>
Service Territory.	)	

**INITIAL BRIEF OF THE  
OFFICE OF THE PUBLIC COUNSEL**

**COMES NOW** the Office of the Public Counsel (“Public Counsel” or “OPC”), by and through Counsel, for its *Initial Brief* regarding the remand of File Numbers GO-2016-0332 and GO-2016-0333 in which the Public Service Commission (“PSC” or “Commission”) set the surcharge rates of Laclede Gas Company’s<sup>1</sup> Infrastructure System Replacement Surcharge (“ISRS”) for its Missouri Gas Energy Service Territory (“MGE territory”) and Laclede Gas Service Territory (“Laclede territory”), respectively, and states:

**Procedural History**

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<sup>1</sup> Laclede Gas Company is now known as Spire, Inc.

On September 30, 2016, Laclede Gas Company filed petitions to recover costs associated with its replacements of infrastructure in its Laclede and MGE territories, including entire neighborhood distribution systems, through ISRS surcharges.<sup>2</sup> Included in the ISRS surcharge recovery requests were costs resulting from a 2011 policy where Laclede replaced entire neighborhood mains/service lines rather than replacing only worn out or deteriorated gas mains and service lines. *PSC v. Office of Public Counsel (In re Laclede Gas Co.)*, 539 S.W.2d 835 (Mo. App. W.D. 2017) (transfer denied by *Laclede Gas Co. v. Office of Pub. Counsel*, 2018 Mo. LEXIS 85 (Mo., Mar. 6, 2018)). In its Report and Order the Commission found that “the cost of replacing it [the entire neighborhood systems as opposed to lines that are compromised] can be recovered.” *Id.* at 837.

In its March 6, 2018, decision, the Western District concluded that a significant number of the replacements for which Laclede claimed cost recovery for its Laclede and in MGE territories in Laclede’s Commission-approved-ISRSs were unlawful. The Court methodically determined that Laclede had replaced pipelines that were not: “(1) required for the Company to comply with state or federal safety requirements, or (2) worn out or in a deteriorated condition,” leading the Court to find that Laclede had unlawfully claimed and the Commission improperly allowed ISRS recovery for this infrastructure. *Id.* at 839 (this effort to 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)*). *Id.* at 840(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).

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<sup>2</sup> Case Nos. GO-2016-0332 and GO-2016-0333.

In its April 5, *Order Directing Filing* the Commission agreed that the Parties should meet in a technical conference, confer and then make a recommendation as to how the Commission should proceed in the above referenced cases in light of the November 21, 2017, opinion issued by the Western District Court of Appeals in Case No. WD80544. The Parties to these cases agree that the findings in the Western District's Order in *PSC v. OPC*, 539 S.W.3d 835 (2017) are also applicable to Laclede's 2017 ISRS cases for its Laclede and MGE territories (Case Nos. GO-2017-0201 (MGE territory) and 0202 (Laclede territory)).

In accordance with the Commission's April 5 Order, on April 24, 2018, the Parties held a technical conference. In its May 2 *Order Directing Filing*, the Commission agreed with the Parties' request to meet again and report back to the Commission by May 25 with a recommendation as to how the Commission should proceed in these four cases.

Consequently, the Parties met on May 16, and conferred regarding matters in the record, and the effect of the Western District remand and mandate to comply with the Court's Opinion.

### **The Commission must comply with the Court's mandate**

The Commission may approve a petition [only] if it "finds that a petition complies with the requirements of sections 303.1009 to 393.1015." See Section 393.1015.1(4) RSMo. In order for the Commission to comply with the Court's mandate the Commission must disallow "recovery of [all] costs for the replacement of "plastic components that were not in a worn out or deteriorated condition are not available under ISRS, . . . because those costs do not satisfy the requirements found in the plain language of section 393.1009(5)(a)." 539 S.W.3d at 841.

The Opinion specifically found the Commission erred in allowing recovery for ISRS-ineligible plastic pipes. The Court found Laclede had unlawfully included thousands of feet of pipeline in its MGE and Laclede territories ISRS filings: "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). 539 S.W.3d at 841.

Further, the Opinion is clear that order on remand does not identify a “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” contrary to section 393.1009(5)(a), which unambiguously requires that the replacement be done to comply with state or federal safety requirements. *Id.* at 840.

The Western District’s reversal of the Commission’s orders fully supports the idea that the Commission should have rejected Laclede’s ISRS petitions as containing substantial amounts of ineligible ISRS infrastructure. In fact, the Court rejected all arguments to the contrary:

Laclede and the Commission's Staff essentially argue that the specific condition of the replaced plastic components is not dispositive [but] . . .the effort to 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)*.

[T]he Commission's order does not identify a single "state or federal safety requirement" that mandated the replacement of the plastic mains and service lines . . . . 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."

. . .

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.

*Id.* at 839-840 (emphasis added).

### **ISRS revenues are subject to refund**

The Western District left no open question as to whether Laclede was permitted to recover for the entire neighborhood system replacements under its Laclede and MGE territory ISRSs. Accordingly, the unlawfully collected surcharges must be refunded. In order to comply with the Western District’s mandate the Commission must necessarily identify all non-qualifying ISRS projects and calculate a refund to customers of the excess amounts Laclede collected. “An ISRS and any future changes thereto shall be calculated and implemented in accordance with the provisions of sections 393.1009 to 393.1015. ISRS revenues shall be subject to a refund based upon a finding and order of the commission to the extent provided in subsections 5 and 8 of section 393.1009.” § 393.1012 RSMo.

Subsection 5, defines the projects which are ISRS-qualifying:

(5) “Gas utility plant projects” may consist only of the following:

(a) Mains, 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;

“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). The Western District noted the basis for its conclusion is the Court’s reading of the statute: “our determination [is] that the costs do not satisfy the requirements found in the plain language of the section 393.1009(5)(a).” *Id.* at 838.

The Commission is under Court mandate to act in compliance with the Western District’s Opinion and its interpretation of the ISRS statute. In complying with the mandate the Commission should order a refund as quantified by Public Counsel.

### **Public Counsel’s Calculation of the Appropriate Refund**

To perform his analysis, OPC witness John Robinett used the percentages of plastic the Western District included in its Opinion. The Western District cited in footnote 4 that 16% of main lines and 64% of services lines replaced were plastic. *Id.* at 839, fn 4 (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).

The source of these percentages is Staff Witness Kimberly Bolin’s Rebuttal Testimony in Case No. GO-2016-0332. (*See* EFIS No. 51, Exh. 5, Bolin Rebuttal, 7:1-11). OPC also used Staff work papers, which supported Staff’s recommendations in Case Nos. GO-2016-0332, GO-2016-0333, GO-2017-0201, and GO-2017-0202 for purposes of calculating the refund based on the Western District opinion. *See* Attachment 1.

As shown in Attachment 1, OPC applied the cited percentages to plant additions in each case using Staff’s supporting work papers. This analysis allowed Public Counsel to calculate a conservative estimate of Spire’s adjusted ISRS revenue requirements for its MGE and Laclede territories in light of the Western District’s holding. 539 S.W.3d at 841. That opinion held that recovery of the cost of replacement of plastic pipe was unlawful. *Id.*

So the Commission may comply with the Court’s mandate, OPC performed the calculations shown below. Public Counsel’s calculations a conservative estimate of the amount of overcollection due to customers do not include a rate of return, which must be part of the final customer refund amount.

Case Number	Annual Revenue Requirement difference	Monthly Revenue Requirement difference
Laclede GO-2016-0333	\$1,237,621	\$103,135
Laclede GO-2017-0202	\$418,113	\$34,843
MGE GO-2016-0332	\$1,609,423	\$134,119
MGE GO-2017-0201	\$1,181,391	\$98,449

Laclede’s ISRS rates were effective for 15 months for File Nos. GO-2016-0332 and GO-2016-0333 and 11 months for File Nos. GO-2017-0201 and GO-2017-0202. In order to calculate the needed refund for each case, OPC multiplied the month revenue requirement by the number of months rates were in effect. Laclede’s ISRS rates became effective for Case Nos. GO-2016-0332 and GO-2016-0333 on January 28, 2017. Laclede’s ISRS rate became effective for Case Nos. GO-2017-0201 and GO-2017-0202 on June 1, 2017.

Case Number	Monthly Rev. Req. diff.	Months Rate effective	Refund
Laclede GO-2016-0333	\$103,135	15	\$1,547,025
Laclede GO-2017-0202	34,843	11	\$383,273
MGE GO-2016-0332	\$134,119	15	\$2,011,785
MGE GO-2017-0201	\$98,449	11	\$1,082,939

Total refund for Laclede's Laclede territory for Case Nos. GO-2016-0333 and GO-2017-0202 is \$1,930,298.

Total Refund for Laclede's MGE territory for Case Nos. GO-2016-0332 and GO-2017-0201 is \$3,094,724.

Total Refund Laclede owes Missouri Customers is \$5,025,022.

**Wherefore** Public Counsel recommends the Commission comply with the Western District's mandate and determine that Laclede unlawfully overcollected ISRS revenues in the amount shown above and Commission should order Laclede to refund that overcollection to customers through a line item on customers' bills.

Respectfully,

/s/ Lera Shemwell

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OFFICE OF THE PUBLIC COUNSEL

### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties of record electronically on this 29<sup>th</sup> day of June 2018.

/s/ Lera Shemwell

Lera Shemwell