BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Laclede Gas Company's)
Request to Increase Its Revenue for Gas Service)

Case No. GR-2017-0215

In the Matter of Laclede Gas Company d/b/a)
Missouri Gas Energy's Request to Increase Its)
Revenues for Gas Service)

Case No. GR-2017-0216

OFFICE OF THE PUBLIC COUNSEL'S
REPLY BRIEF

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EXECUTIVE SUMMARY

In Reply to Initial Briefs filed in this case, the Office of the Public Counsel ("OPC" or "Public Counsel") will respond to the Initial Brief of Laclede Gas Company ("Laclede"), and Missouri Gas Energy ("MGE"), (collectively "Company" or "Companies") both wholly-owned subsidiaries of Spire, Inc. ("Spire'). Public Counsel also responds to Staff's Initial Brief, and the Department of Economic Development-Division of Energy's Initial Brief.

INTRODUCTION

The Commission must follow the statutory standard that all charges made or demanded "shall be just and reasonable and not more than allowed by law."[1] The PSC's purpose is to protect the consumer against the natural monopoly of the public utility, generally the sole provider of a public necessity.[2] The "dominant thought and purpose" of the PSC "is the protection of the public . . . the protection given the utility is merely incidental,"[3] The "whole purpose" of public utility regulation is to protect the public.[4] "This system is designed to protect consumers against exploitation where competition is inherently unavailable or inadequate, and to insure that these industries will serve the public interest."[5]

In its Introduction, the Company suggests that for eight years it has been able to increase base rates only for "safety-related and mandated . . . investments under ISRS."[6] The fact is that the Company has continually and significantly increased its rates between rate cases through the

[1] Section 393.130.1, RSMo (2016)
[2] *May Dep't Stores Co. v. Union Electric Light & Power Co.*, 107 S.W.2d 41, 48 (Mo. 1937).
[3] *State ex rel. Crown Coach Co. v. P.S.C.*, 179 S.W.2d 123, 126 (Mo. 1944).
[4] *State ex rel. City of St. Louis v. P.S.C.*, 73 S.W.2d 393 (Mo. 1934).
[5] *UCCM* 585 S.W.2d at 48, c*iting*, Priest, 1 Principles of Public Utility Regulation 2 (1969).
[6] Initial Post-Hearing Brief of Laclede Gas Company and Missouri Gas Energy (Laclede Initial Br. p. 1.

Infrastructure System Replacement Surcharge (“ISRS”) process. The ISRS is single-issue rate mechanisms which is “a radical departure from the usual practice of approval of filed rates, in the context of a general rate case” and the Supreme Court found single-issue rate mechanisms unlawful unless specifically authorized by statute and with appropriate statutory checks, safeguards, and mechanisms for public participation.[7]

The ISRS statute includes: (1) narrow definitions of what projects qualify. Section 393.1009 RSMo; (2) a limit of the total ISRS recovery to ten percent of base revenues, Section 393.1012 RSMo; (3) a filing of ISRS petitions and supporting documentation with the Commission and Public Counsel; and (4) a requirement that the gas utility adjust its general service rates every three years. These protections show the Legislature’s concern that the ISRS creates the potential for excessive utility earnings. A concern regarding excessive earnings and a return to just and reasonable rates is the reason for the requirement a rate case filing be made every three years. This case proves the Legislature’s concerns were well founded.

The ISRS statute contains a narrow definition of “‘**Eligible infrastructure system replacements**’[8] to include gas utility plant projects that:

a) Do not increase revenues by directly connecting the infrastructure replacement to new customers:
b) Are in service and used and useful;
c) Were not included in the gas corporation’s rate base in its most recent general rate case; and
d) Replace or extend the useful life of an existing infrastructure.”[9]

[7] *State ex rel. Utility Consumers Council of Missouri, Inc.. v. P.S.C.*, 585 S.W.2d 41 (Mo. banc 1979) ("UCCM"), Section 393.270 RSMo.
[8] Section 393.1015, RSMo. (2016) (emphasis in original)
[9] Section 393.1009 (3) (a), (b), (c), and (d) RSMo (2016).

In a recent case, the Western District found many of Laclede's ISRS replacements approved by the Commission were illegal.[10] The Court found the Company had gone well beyond the infrastructure authorized for replacement by the ISRS statute. Section 393.1009(5)(a)(2016) The Court, in deciding the Commission had approved replacements that are not statutorily authorized, said Section 393.1009(5)(a) has two prerequisites: [It] "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." 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 by the Court).[11]

The Court rejected all arguments for Laclede's installation of plastic pipe, finding it was not worn out or deteriorated.[12] The Court also found the Commission did not identify "a single 'state or federal safety requirement' that mandated the replacement of the plastic mains and service lines."[13] Further, the Western District court of appeals found Laclede had unlawfully replaced thousands of feet of pipeline that failed to meet the statutory requirements. "In fact, a sample of work orders provided by Laclede and analyzed by the parties revealed that 53,415 feet of main

[10] *Public Serv. Comm'n v. Office of Pub. Counsel (In re Laclede Gas Co.)*, No. WD80544, 2017 Mo. App. LEXIS 1183 (Ct. App. Nov. 21, 2017).
[11] *Public Serv. Comm'n v. Office of Pub. Counsel (In re Laclede Gas Co.)*, No. WD80544, 2017 Mo. App. LEXIS 1183 (Ct. App. Nov. 21, 2017).
[12] *Id.* p. 6.
[13] *Id*.

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).[14]

In a foot note the Court noted that the Company may not use ISRS as an opportunity to replace components that are not deteriorated or worn out:

> 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.[15]

The Court concluded by explaining the purpose of the ISRS Surcharge which "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). But the Company has been using the ISRS statute surcharge unlawfully to increase its rate base between rate cases, avoiding the scrutiny of costs that accompany a rate case filing. The Companies claims of superior performance must be read in light of the Court's finding the Companies unlawfully used the ISRS statute to increase its customers' rates.

Below, Public Counsel responds to issues in the order they were addressed in Initial Briefs.

I. Forest Park Property

The Forest Park Property was an integral part of Laclede's service to its customers for response to leak repair calls, meter repair, testing or replacement, and off-site construction.

[14] *Id*.at footnote 4.
[15] *Id*. at footnote 3.

Laclede used this facility to provide customer service and even after it sold this facility, it leased some of the space to continue to provide necessary, even critical, customer services.[16] In other words the property was used and useful at the time Laclede sold the property in May 2014. The Company argues this was a land-only transaction, but Laclede continued to use the buildings even after the sale. The Company argues customers should not share in the gain because, in an argument totally irrelevant to the issue, Laclede engaged in a "very successful restructuring" to move its employees to different facilities. . . .[17] All of these arguments are only a distraction from the true issue and provide no response to OPC's argument that the most reasonable ratemaking treatment is to credit the gain from the sale to offset the costs of the Manchester replacement facility. Laclede admits the Manchester facility was a partial replacement of the Forest Park building.[18] OPC's approach discourages Laclede from manipulating sales in order to report higher profits to shareholders. This is a just and reasonable result because customers had been paying a return of and on these facilities for decades. It is also a just result because buildings on this property were capital assets that remain on Laclede's books today, and it continues to recover a return on the facilities. A much less just result in the alternative, would be for the Commission to order Laclede to put the $1.8 million back into depreciation reserves.

II. Kansas Property Tax

Public Counsel agrees with the Staff's position on this issue. Company witness Noack recommended the Commission authorize it to collect an annual amount of Kansas property tax of $1,691,513.[19] Staff's chart in the on page 3 of Karen Lyons surrebuttal shows the Kansas property

[16] Staff Direct Cost of Service Report, 49:6-12.

[17] Spire Initial Br. at 11.

[18] Ex. 250, surrebuttal of Staff witness Jason Kunst p. 4:13-20.

[19] Tr. 18, 1682:13-15; and Ex. 250, surrebuttal of Staff witness Jason Kunst, Schedule JK-s2 (Laclede's Response to OPC Data Request 1-95, in which Company witness Glenn Buck states that the "building is being constructed as a partial replacement for our Forest Park facility…").

taxes MGE paid from 2009 to 2016. The chart demonstrates the level of $1,691,513 is not justified because every year but one was lower than that amount. The Commission should reject MGE's recommendation.[20]

Public Counsel goes further than the Staff in that it does not believe trackers are generally appropriate in cost of service ratemaking. But OPC agrees with Staff it is reasonable in this case because the level of Kansas property taxes is assessed in a unique way and thus is more likely to be volatile than Missouri property taxes.[21] The Company, Staff and OPC have agreed to review the tracker again in the next general rate case to determine if further continuation is appropriate at that time.[22]

III. Common issues

A. Capital Structure and Cost of Capital

Cost of capital

The Companies provide a misleading and manufactured zone of reasonableness analysis and mislead the Commission about the effect of the Companies' size on ROE.

OPC and MIEC, through Mr. Michael Gorman, recommends a return on equity ("ROE") which falls within a reasonable range of 8.9% to 9.4%.[23] Staff, through Mr. David Murray recommends a ROE which falls within a reasonable range of 9.0% to 9.5%.[24]

No Company witness provided a recommended range of ROEs. The only ROE recommended by the Company was the ROE of the Companies' witness Ms. Pauline Ahern, who recommended 10.35%.[25] Ms. Ahern applied a size adjustment to account for her opinion that "size

[20] Ex. 252 Staff witness Karen Lyons Surrebuttal Testimony, P. 6:3-7
[21] *Id.* p, 7:9-20.
[22] *Id.* p, 4:4--8
[23] Ex. 407, direct testimony of OPC/MIEC witness Michael Gorman, 2:9-11
[24] Ex. 204, Staff direct testimony Cost of Service, 45:24-31
[25] Laclede/MGE Initial Brief, 26 (citing "Ex. 38, Ahern Direct, p. 47").

affects business risk because smaller companies generally are simply less able to cope with significant events that affect sales, revenues, and earnings."[26]

Although the Companies failed to develop a factual record to support these claimed maladies, OPC did discover that the Companies have billions of dollars in rate base and are the largest investor owned gas utility in Missouri.[27] Nevertheless, the Companies continue to argue that they are so small and "less able to cope [with reality]" that their ROE should be adjusted by 20 basis points.[28]

OPC believes the credibility of the Companies is diminished by arguing for a size-adjustment, especially when compounded with its argument for a zone of reasonableness. As support, OPC points out that the Companies compare this case to the Liberty Utilities Corporation ("Liberty") gas case. The Companies suggest that Staff witness David Murray "confirmed" that the Companies' ROE of 10.35% is within the "current zone of reasonableness," and that there is an implied "upper range" of 9.89% to 10.89% because of changes in national averages.[29] Interestingly, in their brief, the Companies conveniently avoid expressly mentioning the lower end of the argued hypothetical zone of reasonableness, *which is 8.69%*.[30] OPC argues the Companies de-emphasized the lower range of 8.69% to draw attention away the credible recommendations of other parties.

The reason that the comparison with the Liberty rate case harms the credibility of the Companies is because, on the one hand the Companies points out a 10% ROE was awarded for

[26] Ex. 38, direct testimony of Laclede/MGE witness Pauline Ahern, 12:7-10
[27] *Compare* Tr. 18, 1438:1-5. (explaining that Laclede was the largest investor-owned utility in Missouri prior to the time it joined with MGE and explaining Laclede/MGE is *currently* the largest investor-owned utility in Missouri) *to* Tr. 18, 1506:1-4 and 1505:22 (the Companies have $2 billion in rate base if you only look at the Missouri holdings).
[28] Laclede/MGE Initial Brief, 29
[29] Laclede/MGE Initial Brief, 23.
[30] Tr. 17, 1293:6-7

Liberty[31], but on the other hand, the Companies do not argue in favor of a reduced ROE for the substantial size difference between the Companies and Liberty. If we followed the logic of Ms. Ahern, then one would naturally argue that the Companies ROE should be lower because they are so much larger than Liberty. But, that is not what the Companies argue because it would mean conceding that a lower ROE is appropriate.

The Commission should reject the Companies proposed ROE, and the Commission should adopt the reasonable ROE of 9.2% sponsored by OPC/MIEC witness Mr. Gorman.

The Companies' actions and arguments do not honor the Stipulation in Case No. GM-2013-0254 which prohibits "indirect" rate recovery of an acquisition premium.

OPC/MIEC, through Mr. Gorman, agrees with the utilization of the Companies' capital structure rather than the parent's capital structure, and OPC/MIEC agrees with an adjustment to account for a $170 million long-term debt. However, OPC/MIEC cannot agree to include $210 million in goodwill as proposed by the Companies because, among many reasons, it does not honor the Stipulation and Agreement in Case No. GM-2013-0254 ("Stipulation").

When addressing questions from Chairman Hall, Mr. Gorman explained to the Commission that he has reviewed the capital structure so as to ensure that the Companies "maintain its financial integrity, credit standing, but to do that at the lowest possible costs to retail customers."[32] Mr. Gorman further explained "that's how I approach my review of Laclede's actual capital structure, and I found that without removing goodwill, the common equity ratio was much higher than needed in order to support their current bond rating."[33] Further, the Companies fail to credibly rebut Mr. Gorman's recommendation to exclude goodwill from the capital structure.

[31] Tr. 17, 1293:8-13.
[32] Tr. 17, 1372:8-24.
[33] *Id*. at 1372:15-19.

The Companies' interpretation of the Stipulation relies on a single consideration. The Companies witnesses interprets the Stipulation to be satisfied if the Companies "excluded goodwill from its rate base."[34] According to the Companies, anything beyond excluding goodwill from rate base would "run counter" to the Stipulation.[35] Company witness Mr. Robert Hervert distances himself from his own interpretation by explaining that he is "not an attorney; however, he proceeds by quoting from the Stipulation, which restricts the Companies from "direct or indirect rate recovery or recognition of any acquisition premium in any future general ratemaking proceeding in Missouri."[36]

Mr. Hervert's non-legal interpretation makes no legal or logical sense because the stipulation uses the terms "direct" rate recovery and "indirect" rate recovery. The quoted stipulation language goes further to prohibit even a "recognition" of any acquisition premium in ratemaking proceedings. During the evidentiary hearing, Mr. Gorman clearly testified that inclusion of goodwill in the capital structure would result in indirect rate recovery or recognition of an acquisition premium in the current ratemaking proceeding.[37]

Even ignoring the Companies misguided interpretation of the Stipulation, the Companies arguments are unconvincing. This Commission should reject them. Clearly, during the evidentiary hearing, the Commission asked good questions on this topic and Mr. Gorman provided reasonable responses to all Commissioner concerns.

For example, the Commission challenged Mr. Gorman to defend his position by referencing the arguments Mr. Hervert made about tracing the acquisition financing back to

[34] Ex. 36, surrebuttal testimony of Robert Hervert, 13:9-20.
[35] *Id.* at 14:23 – 15:1.
[36] *Id.* at 13:13-20 (citing GM-2013-0254, Stipulation and Agreement, July 2, 2013, at Para. 3.a.)
[37] Tr. 17, 1409:1-23.

specific sources.[38] In their brief, the Companies made a similar argument, but the Companies did not reference the response of Mr. Gorman to the Commission in their brief.[39] Mr. Gorman responded as follows: “when one utility buys another, you combine the assets together. You literally add the assets, you add the liabilities, you create a goodwill asset. In order to keep the liabilities and assets in balance, they write up common equity to keep the balance sheet in balance. So when they create the paper goodwill asset, they also create a paper amount of common equity as part of – as normal GAAP-related purchase accounting. So that’s the one instance where I disagree with [Mr. Hervert] because of simply the accounting mechanisms used when two companies merge together.”[40] Mr. Gorman was able to address many such questions and explained that other jurisdictions have considered adjustments of the sort he recommended.[41]

In concluding, Mr. Gorman’s recommendations carry the most strength under scrutiny, are balanced in recognizing the Company’s actual capital structure and the long-term debt adjustment, allow the Company to maintain credit rating at a lower cost to customers, and represent a just and reasonable result that lawfully honors the Stipulation. For these reasons, the Commission should accept Mr. Gorman’s proposed capital structure and rate of return.

B. Rate case expense

Laclede/MGE claim they should recover all rate case expense because, otherwise, the Commission is creating an incentive for the Company to exaggerate its expenses.[42] The greater incentive for the company to exaggerate its expenses is that this is a rate reduction case.

[38] Tr. 17, 1383: 20-25

[39] Laclede/MGE Initial Brief, 41-42

[40] 1383:6-18

[41] E.g., Tr. 17, 1376:14-25

[42] Spire Initial Brief at 48. (Spire should recover all rate case expenses to avoid the “need for a policy that avoids the incentive for the Company to drive up its cost of service in order to cut down on rate case disallowances.”)

Moreover, Laclede denies any responsibility for the rate case expenses, but in fact, as Staff witness Keith Majors testified: "LAC and MGE have asked for more new [and] unique **shareholder-**focused-ratemaking tools than KCPL did in Case No. ER-2014-0370."[43] At the hearing, Laclede admitted that the Companies controlled many of the issues brought to hearing.[44] Also at hearing, Mr. Buck, admitted that the rate case sharing policy previously adopted by the Commission might also encourage Laclede/MGE to be reasonable in its rate case spending.[45] Those include proposals to limit the Companies' risk such as the revenue stabilization mechanism, and its proposal to socialize credit card fees. This is on top of the Company's requested ROE of 10.35%; the hiring of expensive consultants; its proposal to add three more trackers; the proposal for performance-based incentive compensation; and Company's proposal to "retain" synergies from its purchase of EnergySouth and Alagasco, despite failing to seek Commission approval of these transactions.

Laclede denies responsibility for the fact this case did not settle.[46] Public Counsel entered into negotiations in good faith and actively pursued settlement. In that regard, OPC proposed a universal settlement of all issues in the case. Contrary to Spire's claim that a 'great deal of the rate case expense in this case was driven by matters outside of our control,"[47] the Company declined to even negotiate OPC's universal settlement proposal, which was a decision entirely within its control. Public Counsel negotiated several settlement provisions only to discover the language the Company later proposed did not accurately reflect the negotiated agreement. Other parties came prepared to settle issues, but Laclede did not have individuals in the room with the authority to

[43] Ex. 254, Staff witness Keith Majors surrebuttal, p. 8: 4-5. (emphasis and hyphens added).
[44] Tr. Vol. 18:1666:20-21.
[45] *Id.*
[46] Tr. 18, 1678:2-18.

[47] Spire Initial Br. at 48.

reach settlement. Public Counsel had constructive discussions with other parties, which ultimately resulted in settlement of the red-tag program, low income settling revenue allocation and rate design issues, the red-tag and EnergyWise and Insulation financing, energy efficiency and low-income weatherization, and other low-income programs. After productive discussions with Staff, OPC also settled the off-system sales incentive plan, the gas supply incentive plan, lost and unaccounted for Gas, depreciation, the Kansas property tax issue, and the St. Peters Lateral issues. In fact, Public counsel was productively discussing settlements with Staff and other willing parties through the beginning of the hearings.

Public Counsel also notes that it will not be intimidated by the many ad hominem attacks by Spire, the accusations of improper motive, and the Companies assignment of blame to parties who, while passionate, have notably been professional, cooperative, respectful and courteous.

There are many reasons this case went to hearing. The Commission should order that prudently incurred expenses be split using the sharing mechanism between ratepayers and shareholders based the methodology the Commission adopted in its *Report and Order* in Case No. ER-2014-0370.[48] On appeal, this mechanism was approved by the Western District Court of Appeals.

The exception to that recommendation is the expense associated with Company witness Flaherty.[49] At hearing the Chairman questioned the reasonableness of this cost from the perspective of shareholders. Public Counsel joins in questioning the expense from customers' point of review. The Commission should review this particular expense for prudence in light of

[48] ER-2014-0370, Report and Order, Item No. 592, Pg. 72 (September 2, 2015) (EXHIBIT A)
[49] Tr. 19, 1841:4-25; Tr. 19, 1721:1-20 (describing Mr. Flaherty's budget of $250,000 having been "overspent" in the amount of $6,000).

the extraordinary hourly rate paid find that this rate case expense is unreasonable and should not be recovered through rates.

C. Cost Allocation Manual

In answer to the question: "should an independent third-party external audit be conducted of all cost allocations and all affiliate transactions, including those resulting from Spire's acquisitions, to ensure compliance with the Commission's Affiliate Transactions Rule, 4 CSR 240-20.015 (sic)"[50]? OPC's answer is that a Third-Party External Cost Allocation Audit for Spire Missouri is Essential.

While Spire Missouri touts in its initial brief that it "undertook an extensive process with an industry renowned firm and highly experienced team to review and implement the necessary updates to its allocation processes for the growth achieved over the past four years,"[51] Spire Missouri asserts that "it is open to considering the thoughts, ideas and recommendations of other interested stakeholders on how the CAM and its procedures for charging and allocating costs could be potentially enhanced, especially in the wake of [Spire's] acquisitions over the past four years."[52] However, in response to the Office of the Public Counsel's recommendation that the Commission require Spire Missouri to undergo a third-party cost allocation audit, Spire Missouri responds that

> - [Spire Missouri] has already used a prestigious accounting and consulting firm with significant industry experience to develop and implement updates to its allocation procedures[;]
> - Hiring another expensive consultant to perform an audit would be wasteful, and its benefits would not outweigh its costs[; and]
> - Any reviews to be undertaken and proposed enhancements can be addressed in the CAM working group.[53]

[50] The correct rule cite is 4 CSR 240-40.015.
[51] Spire Missouri initial brief, p. 56.
[52] Spire Missouri initial brief, p. 57.
[53] Spire Missouri initial brief, p. 58.

First, the accounting and consulting firm to which Spire Missouri refers is Strategy&, a part of PwC.[54] Mr. Thomas J. Flaherty, first a partner of, then a consultant for Strategy& while providing consulting services to Spire,[55] testified in this case for Spire Missouri as to what services he provided. As OPC pointed out in its initial brief, the Commission should not rely on Spire's consultant Thomas J. Flaherty's review of Spire Missouri's processes for compliance with its cost allocation manual, compliance with the Commission's affiliate transactions rule, or as a substitute for a costs allocation and affiliate transactions audit, as his review

- was not intended to evaluate the sufficiency or implementation of Spire Missouri's CAM;
- was not intended to determine Spire Missouri's compliance with the Commission's Affiliate Transactions rule 4 CSR 240-40.015;
- was too superficial to assess the reasonableness of charges allocated to Missouri; and
- is deficient.

Rather than repeating its arguments on these points here, OPC refers the Commission to pages 18-19 of its initial brief.

As argument for why a third-party cost allocation audit is not needed, Spire attacks the work of OPC witness Ara Azad. However, Spire Missouri's examples of claimed deficiencies in her work, when all of the relevant evidence is viewed, instead strengthen OPC's arguments for this audit. Spire Missouri claims on page 60 of its initial brief that OPC's withdrawal of its newBlue management information system issue as part of a bundle of issues settled on December 20, 2017, demonstrates that "the only allocation adjustment [Ms. Azad] could find to make was one that was completely discredited before the proceeding concluded." First, unless the Commission rejects the December 20, 2017, settlement, the newBlue management information system issue is not

[54] Ex. 46, direct testimony Spire Missouri witness Thomas J. Flaherty, p. 1.

[55] Ex. 46, direct testimony Spire Missouri witness Thomas J. Flaherty, p. 1; Ex. 47, rebuttal testimony Spire Missouri witness Thomas J. Flaherty, p. 1.

before it, and Spire Missouri's opinion is nothing more than that—Spire Missouri's opinion. Second, OPC has never claimed Ms. Azad, or anyone else, has performed a cost allocations audit that would suffice for the audit OPC recommends, quite the contrary. Third, Ms. Azad's review identified significant and numerous problems with Spire Missouri's shared services cost accounting, allocations methodology, and compliance with the Commission's affiliate transactions rule, which she related in her testimony. Those identified problems include improper exclusion of companies from allocations,[56] improper application of the Massachusetts formula,[57] a high level of variability in and sporadic use of allocation factors in the test year,[58] and violations of Spire Missouri's CAM.[59]

Fourth, while pertaining to a different issue, it is relevant that, on the cusp of the evidentiary hearing in this case, Spire Missouri acknowledged that it had made a $100 million accumulated deferred income tax error, which correlates to a revenue requirement reduction of $10 million collectively to Laclede and MGE, and that it would not have agreed to having made the error if OPC's witness Charles R. Hyneman had not vigorously pursued the issue.[60] If Spire Missouri could make such an error regarding the comparatively simple matter of the treatment of its income taxes, absent an independent audit, why should anyone believe it has not made one or more errors regarding its much more complicated corporate cost allocations?

Spire Missouri's attempts to discredit Ms. Azad's testimony are refuted by the record. On page 60 of its initial brief, Spire Missouri states, "Ms. Azad complained repeatedly about her

[56] Ex. 401, direct testimony OPC witness Ara Azad, pp. 25-27; Ex. 426, surrebuttal testimony OPC witness Ara Azad, p. 16; Tr. 19:1955-56.
[57] Ex. 426, surrebuttal testimony OPC witness Ara Azad, pp. 15-16; Tr. 19:1955-56.
[58] Ex. 401, direct testimony OPC witness Ara Azad, pp. 31-34, 39; Ex. 426, surrebuttal testimony OPC witness Ara Azad, p. 14; Tr. 19:1964.
[59] Ex. 401, direct testimony OPC witness Ara Azad pp. 8, 40.
[60] Tr. 16:1064-66.

inability to obtain information from the Company…" and "that those complaints were thoroughly rebutted by the testimony of Company witnesses Krick and Flaherty." The last statement is inaccurate. As Ms. Azad testifies on pages 21 and 22 of her surrebuttal testimony, Spire Missouri's responses to OPC's data requests were deficient in both quality and timeliness. Spire Missouri witness Timothy W. Krick's October 17, 2017, rebuttal testimony that he was "unaware" of Ms. Azad's assertions that Spire Missouri's responses to discovery were insufficient until after he read her direct testimony,[61] is impeached by the July and August, 2017, email correspondence Ms. Azad attached to her surrebuttal testimony.[62] If Mr. Krick did not know, it was due to Spire Missouri's failure to inform him. That Spire Missouri's own witnesses were unaware of significant deficiencies in discovery that were called to their attention by OPC, and that Spire Missouri would then use that ignorance in an attempt to rebut factual OPC witness testimony demonstrates both Spire Missouri's disorganization, and its general lack of respect for the discovery process.

On page 60 of its initial brief Spire Missouri also asserts that Ms. Azad misunderstood the Commission's affiliate transactions rule applicable to it. Spire Missouri cites to the hearing transcript where Spire Missouri claims Ms. Azad is advocating for an interpretation of the affiliate transactions rule that would preclude Spire Missouri from taking advantage of the sharing of corporate support services as support for its assertion. Spire Missouri conveniently fails to acknowledge that Ms. Azad testified at the hearing that a utility can request a variance from the affiliate transactions rule to allow transactions between affiliates at something other than the lower of fully distributed cost or market.[63] The Commission should recognize this as what it is, Spire Missouri mischaracterizing the record in an attempt to substantiate a specious argument.

[61] Ex. 24, rebuttal testimony Spire Missouri witness Timothy W. Krick, p. 2.

[62] Ex. 426, surrebuttal testimony OPC witness Ara Azad, Schedules AA-S-5 and AA-S-6.

[63] OPC witness Ara Azad, Tr. 19:1976.

Spire claims on page 59 of its initial brief that "there is no basis for incurring the additional cost of hiring a third party consultant" to perform a cost allocation audit. OPC disagrees. The bases for conducting a detailed audit of Spire Missouri's cost allocations process and implementation have been established through the testimonies of OPC witnesses Azad, Hyneman and Marke. Had Spire Missouri conferred with stakeholders before hiring Strategy& for its high-level review, and agreed to the scope, cost parameters and who would bear the cost of the audit, conducting a cost allocations audit may not be at issue in this case. As OPC briefed at pages 18-20 of its initial brief, Spire Missouri has a long history of being obstreperous regarding its cost allocations. While such an audit would have a cost, the potential impact on Laclede/MGE ratepayers from being overallocated costs is far greater than the cost of such an audit.[64]

Spire Missouri's arguments against a cost allocations audit are without merit, and for the reasons OPC provided in its initial brief and in the record, the Commission should order Spire Missouri to retain an auditor selected jointly by Commission Staff and Public Counsel. This independent auditor should assess the adequacy of Spire Missouri's processes and internal controls for affiliate transactions, audit the affiliate transactions and shared services costs charged to Laclede and MGE, identify the quantitative and qualitative impact of any violations to the Commission's affiliate transactions rule, and recommend provisions to include in Spire Missouri's cost allocation manual and for employee implementation of the manual, particularly for costs allocated to Missouri for recovery from Missouri consumers.

D. Gas Inventory Carrying Charges.

[64] For example, in 2010 the New York Public Service Commission initiated a cost allocations review of National Grid that identified $24.75 million in over-charges that were then credited back to New York ratepayers. Ex. 426, surrebuttal testimony OPC witness Azad, p. 20.

The Companies misinformed the Commission with inaccurate arguments. First, the Companies inaccurately argue that "[o]nly OPC witness Charles Hyneman opposes including natural gas storage costs in rate base."65 That assertion is not true.

As stated in OPC's initial brief, Staff witness David Sommerer's recommendation to include natural gas storage costs in rate base for the Companies is specifically conditioned upon the Commission granting some level of short-term debt in the capital structure, which the Companies oppose.[66]

To provide context, the Companies own counsel has argued in favor of OPC witness Mr. Hyneman's methodologies and reasoning for inclusion of these costs in rate base in past cases.[67] In fact, Laclede has enjoyed PGA/ACA treatment of natural gas storage costs for many years.

OPC argues the Companies are misplaced to point to the treatment of smaller utilities as the sine qua non (something absolutely indispensable or essential) for the treatment for the largest investor-owned gas corporation in Missouri. In fact, this issue becomes much more impactful on customers when a larger company is involved. The proposal of the Companies should be mindful not just of the potential to earn a return for their shareholders but also of the customer impact. OPC's proposal and Staff's proposal are mindful of the customer impact and the PGA/ACE treatment of these costs by Laclede for years shows it is a proper balance between customers and shareholders.

The Companies proposal is not mindful of the customer impact, and in their brief, the Companies fail to mention the multi-million dollar impact to customers. The Companies' brief

[65] Spire Initial Brief, 63

[66] Ex. 259, Staff Surrebuttal Testimony of David Sommerer, 5:8-14

[67] Ex.425, OPC Rebuttal Testimony of Charles Hyneman, 8 –16:3 (quoting GR 2005-0284, In the Matter of Laclede Gas Company's Tariff to Revise Natural Gas Rate Schedules Stipulation & Agreement Hearing, September 26, 2005, Tr., pp. 107-108).

fails to mention or quantify the monetary consequences of its recommendation on ratepayers. The only quantification of their proposal arises when the Companies criticize Staff's inclusion of short-term debt in their capital structure arguing in favor of themselves and their shareholders.[68] The Companies are so focused on quantifying the benefits to themselves and their shareholders that their brief fails to mention the impact on many captive customers. As stated several times by OPC, the harm to ratepayers could be as high as approximately $8 million to Laclede's customers and approximately $3.5 million to MGE's customers. [69] This number has real-world significance for the millions of customers heating their home and budgeting their bills.

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

E. Credit Card Processing Fees

In its Initial Brief, Laclede refers to a November 12, 2012 Resolution from the National Association of State Utility Consumer Advocates ("NASUCA"). Public Counsel is pleased to see the Companies recognize this organization as a source of expert testimony. A careful reading of Exhibit 56 urges state commissions to encourage utility companies to accept debit or credit card payments directly from their customers instead of making arrangements with third parties[70] that charge "convenience fees ranging from "about $1.50 to about 5.85 per transaction;[iii]" NASUCA's recommendation is that utility companies accept debit and credit card payments "without interposition of a third party and without convenience fees.[x]" NASUCA also recognizes the benefits to the utility from accepting credit card payments directly which include savings that result from not having to process paper checks, the immediate receipt of payment,

[68] Spire Initial Brief, 46.

[69] OPC Initial Brief, 28, fn. 113.

[70] Ex. 56 NASUCA Resolution (i)

lower collection risks and uncollectible debt expense, improved cash flow, and reduced working cost of capital.[xiv][71].

In fact, in his testimony Company witness Michael Noack admits use of credit cards reduces the Companies' exposure to the risk of bad debt.[72] At the least, LAC should have proposed a reduction in bad debt expense, or uncollectibles, which it did not.[73] In his colloquy with Chairman Hall, Mr. Noack admitted the advantages to MGE. When customers pay by credit card, "[w]e get the cash quicker.[74] Probably the debt goes to the credit card company as opposed – we wouldn't have to deal with bad checks."[75] When Chairman Hall asked if there was a "logical reason payment by credit card would decrease the likelihood of uncollectibles[,]" Mr. Noack responded: "Probably because, especially if someone's paying with, for example, a prepaid debit card, that money's on the card, and if it gets paid to us, we're going to get that money, where if they pay by check, it could be a bad check and, you know, it gets stopped and we don't get that money. So yes, if it gets paid with a credit card, I believe we'll get that money."[76] The Company has not done a study to indicate if credit card payments in fact reduce bad debt, which could benefit all customers.[77]

However, there is no record in evidence that shows all ratepayers benefit from subsidizing credit card fees for the 30% of LAC's customers who use credit cards to pay their bills. In addition, neither Staff, MGE, nor LAC have provided evidence this type of charge will not result in a discriminatory rate, wherein only a certain subset of customers *and the Company* benefit from a

[71] *Id.*

[73] Tr. Vol 15, 1023: 17-20.

[74] Ex. 409, Public Counsel witness Amanda Conner, Rebuttal Testimony p. 4:1-35.

[75] *Id.*

[76] *Id.*

[77] Tr. Vol 16 p. 1026: 17-22.

specific method of payment. In her Rebuttal testimony in this case, Staff witness Ms. Dietrich notes that "Staff Counsel . . . advises that . . . Missouri law forbids the preferential subsidization of certain ratepayers at the expense of all other ratepayers; therefore, it would be unlawfully discriminatory and preferential to require all ratepayers to subsidize"[78] the minority of customers who use credit cards to pay their utility bills. LAC, MGE and Staff propose to socialize credit card fees to all customers, yet none propose to include any cost savings in rates, so there is zero benefit to other customers.

OPC opposes socialization of credit-card fees for both companies. Socialization of credit-card fees means all customers will pay for these fees, even though only some customers actually pay their bill using this method.[79] To state it another way, Laclede and MGE propose to require all of their customers to pay the credit-card fees instead of the limited number of customers who pay by credit card paying the fee.[80] But the Company is not proposing to recognize any customer benefits or cost reductions as a result of credit card acceptance. Until the Company includes all cost savings created by use of credit cards in rates, socialization of this cost is unduly discriminatory. In addition, if the Commission adopts any risk shifting proposals such as the socialization of credit card fees, the Commission should make a significant reduction in the rate of return.

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

F. Uncollectibles

In their initial brief arguing the question "What is the appropriate amount of bad debt to include in base rates?", the Companies argue in support of a three-year or five-year average.[81] However, in its position statement, the Companies only asserted the three-year average.[82] In its initial brief, OPC responded to the Companies' filed position statement of a three-year average. Here, OPC reasserts similar concerns regarding the five-year average to determine a prospective uncollectible basis.

Like the three-year average, the five-year average would have the Commission determine the ongoing uncollectible expenses without consideration of the substantial changes the Companies have made to their write-off policy. OPC concurs with Staff's concern regarding Company witness Mr. Krick's admission to including estimated balance of customer write-offs scheduled to occur on or after October 1, 2017.[83] Mr. Krick's testimony is based on estimates for data outside of the test year and true-up period,[84] and consequently is not known and measurable. Furthermore, the Commission should not be persuaded by the Companies' unsubstantiated claims that a reduction in assistance programs would necessitate an increase projected uncollectible expense.

OPC's recommendation is for the Commission order no change to Laclede's test year Uncollectible Accounts of $6,257,451 and MGE's test year amount of $1,755,577, for a combined $8,013,028 bad debt expense level. This recommendation is based on the most recent twelve months of data available reported by the Companies' accrued uncollectibles designated in Account 904. If the Commission determines OPC's recommendation to apply Account 904 should not be

[81] Initial Post-Hearing Brief of Laclede Gas Company and Missouri Gas Energy, Page 112, EFIS 544 (Jan. 9, 2018).
[82] Statement of Positions of Laclede Gas Company, Page 13, EFIS 268 (Nov. 30, 2017).
[83] Staff's Initial Post-Hearing Brief, Page 99, EFIS 535 (Jan. 9, 2018).
[84] Tr., vol. 16, p. 967: 7-12.

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

The issue of uncollectibles is interrelated to the Credit Card Processing Fees. In an exchange between Chairman Hall and Company witness Michael Noack, the Chairman asked if there was a "logical reason payment by credit card would decrease the likelihood of uncollectibles[,]" and Company witness Michael Noack responded: "Probably because, especially if someone's paying with, for example, a prepaid debit card, that money's on the card, and if it gets paid to us, we're going to get that money, where if they pay by check, it could be a bad check and, you know, it gets stopped and we don't get that money. So yes, if it gets paid with a credit card, I believe we'll get that money."[85]

In support of including credit card fees in revenue requirement, the Companies have testified that socializing these costs is likely to decrease uncollectible expense. Consequently, should the Commission find against OPC's recommendation and determine to include credit card fees in rate base, the Commission should weigh the impact of a decreased uncollectible expense moving forward and approve a lower basis for uncollectible expense.

G. Environmental Tracker

Public Counsel supports the Staff's position as it briefed the issue in Staff's Initial Post hearing Brief pages 47-51.

H. Pensions/OPEBS/SERP

OPC recommends the Commission reconsider the arguments of its initial brief, and OPC suggests skepticism of the Company's self-praise. In the setting of expense levels in this case,

[85] Tr. Vol 15, 1023: 17-20.

OPC conceded to the Company's levels for Laclede and the Staff's levels for MGE after reviewing the facts and circumstances of each.[86] In its initial brief and in testimony, the OPC recommended a strategic review of pensions and OPEBS to better inform the funding of pension expense levels.[87] Because neither Staff nor the Company argued in favor or against a review of pensions and OPEBs, OPC will not need to reply.

Separately, however, OPC suggests healthy skepticism with the Companies' self-praise attributing the "relatively minor rate increase [request] thanks to Spire's efforts in controlling cost."[88] Keep in mind that OPC filed a complaint that the Company was over-earning rather than "controlling costs." Such self-praise by the Companies should be given no weight.

The Companies are unable to rebut history, imply an incorrect evidentiary standard to the pre-1996 pension assets, and mislead the Commission about the value of the prepaid pension asset.

OPC agrees with the Companies that this is an "excellent opportunity to end" any alleged dispute over pre-1996 pension asset.[89] However, OPC agrees with Staff as to the result: that Staff's "long-standing adjustment to remove the pre-1994 prepaid pension asset for FAS 87 and September 1, 1994, to September 1, 1996, prepaid pension asset for FAS 88 should be upheld."[90]

The Companies argue that "Staff has insufficient evidence to support an assertion that LAC is not entitled to begin recovering the disputed pre-1996 pension asset of $28.8 million." That implies that Staff carries said burden, which is an incorrect evidentiary standard. In any event, the Companies are factually and legally incorrect despite the added expense of hiring Laclede's former controller, James Fallert.

[86] *Id*.
[87] OPC Initial Brief, 35-37
[88] Spire Initial Brief, 85
[89] Spire Initial Brief, 86
[90] Staff's Initial Brief, 70

In a different section of the Companies' brief, almost hidden from plain sight, the Companies argue OPC is incorrect in claiming that the Company has funded $60 million in excess of ERISA minimums.[91] The Company boldly claims that each "contribution has been property (sic) vetted."[92] This is not true. Each claim has not been *properly* vetted because the Companies provided misleading data to OPC to obstruct OPC's vetting process, and the Company objected to additional information to better inform the record. There's a quote by Ghandi that goes, "truth cannot harm a cause that is just." In this case, Laclede objected to introducing evidence, presumably out of fear of what it might mean for the Company. OPC argues the result of excluding this truth was unjust. Furthermore, OPC continues to argue that excluding such evidence was improper, unfair, and counter-intuitive to all of the parties' best interest. Although this evidence was excluded, the rationale of OPC in its pre-filed testimony was not excluded, and it remains true that the Company has funded its pension in a way that would not qualify for inclusion in the prepaid pension asset calculation. Consequently, a downward adjustment should be made by this Commission.

The Staff's "case by case" method should not be favored over its historical approach.

The Staff argues that a case by case methodology for accounting for SERP expense is appropriate.[93] During the evidentiary hearing, OPC explored the strength of the case by case method. For starters, the case by case approach employed by Staff witness Mr. Matt Young reveals that this is his first case in which he has done any SERP analysis.[94] Mr. Young also admitted that, as a part of the case by case approach, he does not research historical Staff practices other than

[91] Spire Initial Brief 94
[92] *Id*.
[93] Staff's Initial Brief, 74
[94] Tr. 20, 2227:13-19.

two other proceedings.[95] Finally, Mr. Young formed this case by case approach on his own and through some unknown other source, which OPC infers can somehow be gleaned through the "KCPL" cases because OPC witness Mr. Hyneman certainly has not recommended such an amorphous methodology.[96]

Had Mr. Young researched this matter, he would have found additional authoritative sources to give context to his recommendation. Staff nor the Company took opportunity to cross-examine Mr. Hyneman, who could have provided much context of the many audits he performed on many different utilities over the many years of his distinguished career. Instead, Staff asked its own witness the following: "When OPC's been referring to Staff's prior position, who's the prior Staff witness that's…"[97] To which Staff indicates that Mr. Hyneman and Mr. Keith Majors were the sponsors of Staff's prior positions.[98] The Company brings up the same theme, but they only cite to a single case in which Mr. Hyneman participated.[99] OPC argues the intent of such questions is to imply that the opinions were Mr. Hyneman's alone when the reality is that Mr. Hyneman's work product gets reviewed by Staff supervisors, Staff attorneys, and becomes *Staff's* position.

These positions represent a lengthy history of handling SERP payments. As Mr. Young reviewed the historical approach taken by Staff, it appears to have broadened his horizons beyond the case-by-case approach. He even went so far as to admit that some historical approaches could be reasonable alternatives. For example, in the case involving Mr. Majors, Staff annuitized SERP lump sum payments which decreases the adverse impact of including a lump sum amount in rates.[100] After reviewing Mr. Hyneman's testimony and seeing this case, Mr. Young had sufficient

[95] Tr. 20, 2225:1-11.
[96] Tr. 20, 2225:12-20.
[97] 2235: 22-25 – 2236:1-8
[98] *Id*.
[99] Spire Initial Brief, 92
[100] Tr. 20, 2227:20-25 – 2228:1-4

information to agree that Mr. Majors' approach is a reasonable option for the Commission's consideration in this case.[101] It is for this reason, and all of the reasons provided by Mr. Hyneman in his testimony, that the Commission should fashion its order consistent with OPC's experienced and credible recommendation.

It is important to note that Laclede has mismanaged its prepaid pension asset by creating a very large prepaid pension asset all while arguing for a weighted average cost of capital return. These incentives are inappropriate, and Laclede's request does not match the realities of pension obligations.

In a previous section of OPC's Reply Brief, OPC discusses how Laclede gave itself praise for "controlling cost." Laclede's self-administered pat-on-the-back could not be any less deserving than for the issue of Laclede's underfunding of its pension trust. Nevertheless, Laclede picked the pensions section of its brief to again give itself praise in "controlling costs."[102] Contrary to their praise, Laclede has unequivocally failed to control the prepaid pension asset costs causing financial harm to ratepayers. The prepaid pension has grown very large.

The Companies have a financial interest to make the prepaid asset as large as possible if the Companies are induced to earn a rate of return equivalent to the weighted average cost of capital. In fact, an inflated prepaid pension asset is exactly what the Company is arguing by asking for a $160 million valuation of the prepaid pension asset.[103] Some customers might describe Laclede's actions as "nothing more than an opportunistic and very transparent" way of increasing earnings for shareholders by exploiting its interpretation of settlement language – the very description of Laclede's perception of OPC in its initial brief.[104] The plain language of the

[101] Tr. 20, 2233:18-21.
[102] Spire Initial Brief, 85
[103] Spire Initial Brief, 84
[104] Spire Initial Brief, 94

Stipulation referred to by Laclede allows for rate base treatment but does not specifically mention a rate to apply or whether the weighted average cost of capital should be used in perpetuity. One logical interpretation as to why the language of the Stipulation does not specify a return to be used in perpetuity could be to avoid a situation that could bind a party to arguing a different return in a future case, such as arguing a lower ROR or a long-term debt rate rather than a weighted average cost of capital. OPC's recommendation in this case has the benefit of an expert with experience who is uniquely able to provide insight on this issue, and he has recommended a debt rate for a number of reasons previously discussed in OPC's Initial Brief.[105] Such recommendation is not opportunistic. It is prudent, just, and reasonable.

OPC also recommends a review of pensions and OPEBs to explore more options to protect ratepayers from continued harmed by Laclede's mismanagement of pensions and OPEBs. One such item to review would be whether the Company could consider borrowing to help fund its pension trusts. Laclede rejects the concept and supports its position by creating a fictional scenario filled with self-affirmation bias. To clarify OPC's criticism, Laclede worries that it would have to borrow $150 million to refinance a pension obligation, which could lead to higher leverage and constrained investment decisions.[106] Mr. Pitts has noted that pension trust obligations are already treated similar to debt, and that for rating purposes, rating agencies describe an exchange that takes place when a pension obligation owed to a pensioner (debt) is exchanged to a different debt holder.[107] Further, an independent review may not require the same level of re-financing hypothesized by the Company, or a review may even affirm the Companies current course of

[105] OPC Initial Brief, 41-43
[106] Spire Initial Brief, 94
[107] Ex. 408, direct testimony of OPC witness David Pitts, 6:2-12 and 14-17

action. The point of a strategic, independent review is to make better-informed decisions, which the Companies arguably needs desperately yet adamantly refuses.

For these reasons, the Commission should order a long-term debt rate for the prepaid pension asset and the Companies have an independent review of pensions and OPEBs to explore more options to protect ratepayers while meeting the Companies obligation to its employees.

I. Incentive compensation

No earnings based incentive compensation should be included in base rates. All such incentives inure to the benefit of shareholders. The Commission has certain standards it considers when evaluating incentive compensation packages. Public Counsel agrees with Staff that the Commission should continue to apply these standards in this case. In accordance with prior Commission precedent, Staff evaluated incentive compensation to determine if the individual metrics produced a benefit to Missouri ratepayers and incented employees to perform duties at a level above the minimum required. As a result of its review Staff recommended no incentive compensation be included in customers' rates. The Commission has previously excluded discretionary incentive compensation payout as well.[108]

Staff found that, "Spire Missouri's nonunion incentive compensation program fails overall. 50% of the individual metrics are based on earnings per share.[109] The remaining 50% are, overall, vague, subjective individual metrics that do not incentivize employees to improve beyond past performance, or even beyond their basic job function. Spire Missouri's incentive compensation plan for nonunion employees should be excluded from rates."[110]

[108] *In the Matter of the Tariff Filing of The Empire District Electric Company to Implement a General Rate Increase for Retail Electric Service Provided to Customers in its Missouri Service Area*, **Report and Order** issued December 21, 2006, p. 49.
[109] Tr. Vol. 22:2692, lines 13-14.
[110] Staff Initial Brief at 86.

J. Low Income Energy Assistance

In this case, the Companies, Staff, the Division of Energy, and the Consumers Council of Missouri have come to an agreement to extend the program to the MGE service territory and to modify it to provide a year round credit to qualifying customers, households with incomes ranging from 0% to 185% of the federal poverty level, and an additional credit of up to $30 in the winter months to qualifying customers that have incomes ranging from 0% to 135% of the federal poverty level. In addition, the parties have agreed to meet, beginning no later than 120 days after the effective date of new tariffs approved in this case, to discuss the process for evaluating the effectiveness of the Program as well as potential enhancements to the parameters and structure of the Program.[111] OPC did not oppose this agreement.

The only issue left for the Commission to decide is at what level ratepayers should fund these programs. Staff recommends the Commission approve the Companies' proposed budget, maintaining the current funding level of $600,000 annually for Laclede, and approve a funding level for MGE of $500,000, slightly lower than Laclede, which recognizes the fact that it is a slightly smaller company than Laclede. In recent history, Laclede has not spent the allotted amounts designated for its Low-Income Energy Assistance Program. Since program year 2014, Laclede has only spent approximately _____ out of an available $1,800,000.[112] Due to the past under-utilization of the program, Staff does not believe an increase in funding levels is appropriate at this time. OPC agrees with Staff.

The parties have agreed to create a collaborative process to discuss potential improvements to the program on a going forward basis, the parties will have the ability to analyze the utilization

[111] *See* Partial Stipulation and Agreement Regarding Low Income Energy Affordability Program, filed January 9, 2018; EFIS # 512.
[112] Ex. 501 C, page 7 line 19 – page 8, line 2.

of program funds, and determine if any change is necessary in future rate proceedings which, if the Companies continue their ISRS, would be three years at the most.

OPC notes that despite the Companies show of great concern for their low-income customers in the hearing, this concern is not matched by a commitment from the Companies to provide matching funds for their low-income energy assistance programs. For example, in his opening statement for the low-income assistance program, the Companies counsel stated: “We at Spire believe very strongly that we need to do everything we can to help our most vulnerable customers maintain utility service.”[113] Despite this strong belief , in its initial brief, the Companies merely state that it: “has proposed a funding level of $600,000 for LAC and $500,000 for MGE, but is open to a moderately higher level of funding should the Commission deem that to be appropriate.”[114] There is no mention of any contribution from shareholders to help the Companies “most vulnerable customers” through this program.

[113] (Tr. Vol. 15 696:15)

[114] Spire Initial Brief at 122.

OFFICE OF THE PUBLIC COUNSEL'S

TRUE UP BRIEF

I. AMR Devices

The Office of the Public Counsel ("OPC" or "Public Counsel") recommends the Commission set a depreciation rate for Laclede's recovery of the AMR meters it recently purchased from Landis and Gyr. Contrary to Laclede's and Staff's position OPC's recommendation for a depreciation rate is the appropriate method of recovery because this approach is the only way to account for the replacement devices and the new AMR devices Laclede will install for new customers.

When asked what depreciation rate Laclede was using for the AMR devices, Company witness Mr. Lobser responded: "We are using an amortization rate of 13.3 percent. I think we had originally proposed seven year. Staff had proposed seven and a half. And we adjusted from our testimony in our true-up to that seven and a half year."[115] When asked if the Commission had ordered that rate Mr. Lobser responded that it is a proposal only.[116]

When Public Counsel asked Staff witness Keenan Patterson how newly installed AMR devices would be accounted for under the amortization method Staff is recommending, Mr. Patterson responded that: "[i]t would not."[117]

Mr. Robinett explains it is important for Laclede to begin accounting for new AMR or AMI devices in an account with a Commission ordered depreciation rate because this is the method by which the Company recovers its return on its investment. From a customer standpoint, when the Company is both replacing and installing new units the Staff and company position does not

[115] Tr. Vol. 22, 2612:12-20.
[116] *Id*. at 20.
[117] *Id*. at 2647:4-7.

include any accounting approach going past the amortization period,[118] so it is unclear what depreciation reserve, which is an offset to Laclede's rate base, would be included in rates. The Company and Staff proposal oddly, "doesn't track anything that would be replaced."[119]

The Commission should order a depreciation rate for this account so that new AMR or AMI devices are properly accounted for with a Commission approved depreciation rate with a 20 year life.

II. Treatment of the Forest Park gain.

Public Counsel's Recommendation is the Commission credit the entirety of Laclede's gain on the sale of the Forest Park property to depreciation reserve. At the time of the sale, the Forest Park property was used and useful for the provision of serviced to Laclede's customers.[120]

The Forest Park facility was used and useful at the time Laclede sold the property. As a result of the sale Laclede needed to build a replacement facility which it did at the Manchester location. As an alternative to crediting the entire gain to depreciation, Public Counsel strongly recommends the Commission order Laclede to put the $1.8 million in depreciation reserves.

In its Initial Brief, Staff compares this transaction with the sale of a vehicle. "An extremely common transaction for most utilities is the sale of a vehicle, where the proceeds of the sale are used as salvage to offset depreciation reserve. This means the proceeds of those sales benefit ratepayers. "[121] If the Commission chooses not to adopt OPC's recommendation customers should receive the entire gain, OPC recommends the Commission make an appropriate adjustment to depreciation reserve.

[118] *Id*. p. 2650:7-24.
[119] *Id*. p 2652:15- 2653:4
[120] Staff Initial Brief at 14
[121] *Id*.

CONCLUSION

WHEREFORE, based on the recommendations above, Public Counsel recommends that the Commission issue its findings of fact and conclusions of law, determining just and reasonable rates and charges, lawful tariffs and programs for Laclede Gas Company's and Missouri Gas Energy's customers as above recommended by Public Counsel; and granting such other and further relief as is just in the circumstances.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 17th day of January 2018.