

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

In the Matter of Laclede Gas Company’s                    )     **File No. GR-2017-0215**  
Request to Increase Its Revenue for Gas Service    )

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

**PUBLIC COUNSEL’S RESPONSE TO  
THE COMMISSION’S ORDER SETTING TIME FOR RESPONSES**

COMES NOW, the Office of the Public Counsel (“OPC” or “Public Counsel”), and for its response to the Commission’s *Order Setting Time for Responses*, respectfully states as follows:

1. Public Counsel submits this Response to the Commission’s *Order Setting Time for Response* to object to the Spire’s March 23 amended reconciliation with updated billing determinant and Spire’s request the Commission approve those billing determinants as part of its reconciliation order.

2. Public Counsel opposes Commission approval of the reconciliation because Commission approval is contrary to the Western District’s (Court) mandate the Commission address Spire’s unlawful over-collection of Infrastructure System Replacement Surcharge (“ISRS”) through further proceedings. For the reasons discussed below the Commission should comply with the mandate in these rate cases.

3. Spire unlawfully included ineligible plant in its surcharges in File Nos. GO-2016-0333, GO-2017-0202, GO-2016-0333 and GO-2017-0202. The Commission’s “effort to assign ISRS eligibility to plastic pipes that are not work or deteriorated by evaluating an entire

neighborhood system as a singular unit [fails under] the plain language of section 393.1009(5)(a).” PSC v. Office of Pub. Counsel (In re Laclede Gas Co.), WD80544, 2017 Mo. App. LEXIS 1183 (App. Nov. 21, 2017); transfer denied by: Laclede Gas Co. v. Office of Pub. Counsel, No. SC96868, 2018 Mo. LEXIS 85 (Mar. 6, 2018).

4. The Court reversed the Commission’s order to the “extent it allowed cost recovery through the adjustments to the ISRS rate schedules for the replacement of plastic components that were not in a worn out or deteriorated condition.” In concert with its finding the Commission’s order was unlawful, the Court remanded the matters to the Commission for “further proceedings consistent with this opinion.” *Id.* at [\*10].

5. The Commission is able to conform its actions to the Court’s mandate in these rate cases. No additional evidence is necessary because the Court found: “[n]o party contests that the plastic mains and service lines were not in a worn out or deteriorated condition.” *Id.* at [\*6].

6. In recognition of the Court’s mandate, the Commission should address, in these rate cases, the fact that its prior ISRS orders unlawfully included ISRS amounts that were ineligible for recovery and Section 393.1005 contains requirements for a rebate or offset of these amounts of over-collections.

7. One appropriate remedy moving forward consistent with Sections 393.1009 to 393.1015 is to disallow, in this rate case, all four petitions in the prior ISRS cases as not in compliance with the ISRS statutes. 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. Importantly, the statute does not contemplate Commission approval or rejection of only a portion of a petition. The Western District’s reversal of the Commission’s orders fully supports the idea that the Commission should have rejected the 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."

*Id.* at [\*8] (emphasis added).

8. Further, in rejecting Laclede's argument its approach was prudent, the Court was firm that the statute is clear:

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."

*Id.* at [\*8-9] (citation omitted).

9. On a final note, in rejecting the Commission's contention that not allowing the inclusion of plastic pipe would be a disincentive to gas utilities . . . ." the Court said that argument "carries no weight and reflects a misapprehension of the breadth of ISRS-eligibility." To support its conclusion the Court described the "only" incentive the Commission could recognize as authorizing ISRS recovery:

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 [of ISRS eligibility].  
*Id.* at [\*10].

10. Moreover, the Court discussed the substantial level of ineligible replacements included in Spire's 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).  
*Id.* at [\*7].

11. The Commission should act promptly in response to the Western District's mandate reversing the Commission's Order.

WEREFOR, Public Counsel objects to the Commission approval of the rate cases' reconciliations as failing to address and respond to the Western District's mandate reversing the Commission's Reports and Orders (2017 Mo. App. LEXIS 1183, [\*10]) and remanding "for further proceedings consistent with this opinion." (2017 Mo. App. LEXIS 1183, [\*10].)

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

On this 23<sup>rd</sup> day of April, 2018, I hereby certify that a true and correct copy of the foregoing motion was submitted to all relevant parties by depositing this motion into the Commission's Electronic Filing Information System ("EFIS").

/s/ Lera L. Shemwell