



3. On October 5, 2016, the Commission issued an Order Granting Motion to Stay Proceedings. In granting the Stay Request, the Commission authorized OPC to use discovery obtained in the earnings complaint case in Laclede's April 2017 rate cases.

4. On February 3, 2017, Laclede filed a notice that it intended to file rate cases for Laclede and MGE on or after 60 days following the notice. Beginning on February 15, 2017, OPC commenced issuing data requests ("DRs") in the two rate cases that have not yet been filed, and in which neither Laclede nor MGE has even filed any pleadings. OPC issued four DRs on February 15 and two more on March 7.

5. OPC filed the Motions on March 21, indicating that responses to the three DRs it seeks to compel were two weeks overdue, without even mentioning that Laclede had objected to the DRs, or that Laclede's objections had focused solely on the timing of those DRs, stating that Laclede was occupied with the task of preparing two simultaneous rate cases for the first time in its history, and should be entitled to do so without the burden of responding to pre-filing DRs. OPC has been informed, clearly and repeatedly, that Laclede's regulatory and financial personnel are fully occupied in doing their daily jobs and preparing rate case filings and that the three DRs in question would be responded to after the rate case was filed, but not later than April 27. Nevertheless, and in direct conflict with the representations it made in the Request for Stay, OPC has insisted on further detracting from the valuable time available to the Company to prepare its rate cases by scheduling discovery conferences and now filing a motion to compel.

6. Despite having obtained a stay of its earnings complaint until the filing of Laclede's rate cases in April 2017, and despite having represented that the significant amount of evidence it had gathered in the complaint case minimized its need for discovery during the rate cases, OPC is now seeking to ignore those representations and actually accelerate and enlarge its

discovery requests beyond the norms typically followed in rate cases. For example, in DR 1000 OPC asks for Laclede's general ledger through September 30, 2016. But in a recent case, OPC obtained the general ledger through June 30. This is the very kind of information that should minimize OPC's need to jump the gun on discovery timing, not enlarge it.

7. OPC avoided its obligations to file direct testimony in the earnings complaint case that it filed, but now it seeks to impose obligations on Laclede to respond to DRs in rate cases that have not been filed. OPC's actions are not only inequitable, they violate the very representations OPC made to proceed with both the rate cases and earnings complaint in April (not February or March), and to judiciously use the resources of other parties by making good use of the substantial amount of discovery OPC has already obtained.

8. OPC filed this motion to compel responses to the DRs in both of the above titled cases. The only reason these cases even exist is that Laclede is required to provide a 60-day notice of its intended filings under the ex parte rules. Laclede submits that the purpose of this rule is to limit discussions between an applicant and the Commission on substantive matters in a case that the applicant will shortly file with the Commission. However, OPC is trying to use this rule in a way it was never intended: to open up that 60-day period for discovery at a time when the utility's hands are tied.<sup>1</sup> The Commission should not permit it.

9. OPC also points out that Section 386.450 RSMo "does not prohibit OPC from accessing a utility's books and records before the utility has filed for a general rate review." (Motions, par. 6) Section 386.450 is entitled "Inspection of Out-of-State Records." The statute provides for production of inconveniently located records upon a showing of good cause by OPC. In this case, there is no issue regarding the location of records or their production. The

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<sup>1</sup> It should be noted that the Staff, like OPC, could have also tried to take advantage of the Company's inability to commence cases during the 60 day notice period by submitting DRs. To date however, the Staff has shown courtesy, restraint, and a commitment to fair play by not doing so.

only inconvenience here is OPC's inappropriate timing in asking for them. OPC has not and cannot show good cause that Laclede should be required to use the time it has to prepare its rate cases to instead respond to OPC discovery requests. This lack of good cause is further evidenced by the fact that OPC has not previously needed to jump the gun on the 11-month period allowed to process these cases, and by its representations in the complaint proceeding Stay Request that (i) it already has DR responses that it can make judicious use of in the rate cases; and (ii) any further discovery would not commence until those rate cases were filed.

10. Finally, OPC argues that it needs a head start on the rate cases because of its limited resources. (Motions, par. 5) Laclede has two responses. First, OPC already has the five month head start it gained through the filing of its earnings complaint. In fact, in the Stay Request that was approved in October, OPC alluded to discovery it had already obtained in the area of pensions and other post-employment benefits, issues that it implied would be addressed in the upcoming rate case. In fact, OPC has supplemented its resources by retaining the services of an actuary, who has already filed a non-disclosure agreement in the above referenced rate cases. (See Docket Entry #2)

11. Second, as Laclede argued in the ISRS investigation case (Case No. GO-2017-0081), OPC's claims of resource limitations cannot be squared with OPC's constant practice of re-litigating the same cases. For example, OPC has raised the "ISRS Update" issue in three consecutive Laclede and MGE ISRS cases. After the Commission ruled against OPC twice, OPC raised the update issue a third time, forcing the parties to file testimony and prepare to litigate the issue again, before OPC withdrew it on January 2, 2017, the day before the hearing.

12. Meanwhile, OPC also twice appealed the Commission's decision on the update issue to the Western District Court of Appeals. After ruling against OPC in the first appeal, the

Court issued its opinion in the second appeal on March 28, 2017. The Court not only ruled against OPC again, but it also repeatedly noted that OPC's arguments were identical to those that the Court had recently rejected in the first appeal.

13. In the most recent Laclede and MGE ISRS Cases, the Commission ruled against OPC on the "plastics" issue. OPC has already filed a notice of appeal with the Western District on this issue. It remains to be seen whether OPC will require the Commission to consider the plastics issue again in the current ISRS cases.

14. OPC's refusal to accept "no" for an answer from these tribunals has placed a burden on the resources of all stakeholders, as well as on the resources of the Commission and the courts. While that is OPC's choice to make, Laclede respectfully submits that when a party unreasonably insists on litigating and appealing the same issues multiple times, that party should not be heard to complain about how limited its resources are. In fact, OPC appears to be the only entity with the resources to try the same case before the Commission repeatedly, to appeal every Commission decision it disagrees with, and to do so multiple times.

15. Laclede respectfully requests that the Commission deny OPC's Motion to Compel. Laclede has represented that it will provide responses to OPC's DRs by April 27. OPC has shown no good cause that it needs Laclede to produce the information during the time Laclede is preparing its rate cases, nor shown any cause that OPC should be allowed to take advantage of the 60 day notice period to jump the gun on discovery.

Respectfully submitted,

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ATTORNEYS FOR LACLEDE GAS COMPANY AND  
MGE

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing was served on the Staff and the Office of the Public Counsel on this 28<sup>th</sup> day of March, 2017 by hand-delivery, fax, electronic mail or U.S. mail, postage prepaid.

**/s/ Marcia Spangler**\_\_\_\_\_