

**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            )    **Case No. GO-2016-0196**  
Replacement Surcharge in its Laclede Gas Service    )  
Territory    )

In The Matter of the Application of Laclede Gas        )  
Company to Change its Infrastructure System            )    **Case No. GO-2016-0197**  
Replacement Surcharge in its Missouri Gas Energy    )  
Service Territory    )

**RESPONSE TO OPC'S  
MOTION TO DENY WAIVER AND REJECT ISRS TARIFF FILINGS**

**COMES NOW** Laclede Gas Company (“Laclede” or "Company"), on behalf of both its Laclede Gas and Missouri Gas Energy (MGE) operating units, and files this response to the motion of the Office of the Public Counsel (OPC) to deny Laclede’s waiver request and to dismiss its ISRS tariff filings, and in support thereof states as follows:

1. On February 1, 2016, Laclede filed applications in the above referenced cases, along with motions to waive, if necessary, the 60 day filing requirement in Section 4 CSR 240-4.020(2) of the Commission’s *ex parte* rules. On February 10, 2016, OPC filed a motion to deny the waiver and dismiss Laclede’s ISRS tariff filings. The Commission should deny OPC’s motion for the following reasons.

2. First, as OPC itself acknowledges, the requirement to file a 60 day notice only applies if the case resulting from that filing is likely to be a “contested case,” meaning a case in which the “legal rights, duties or privileges of specific parties are required by law to be determined after hearing.” Section 536.010(4) RSMo. In the dozens of ISRS cases filed by Laclede and MGE over the past decade, they have only

filed a 60 notice once; namely in connection with their most recently completed ISRS proceedings. Laclede and MGE did so because it was clear from its immediately preceding ISRS cases that OPC was likely to raise and litigate three issues, including (a) whether certain telemetry equipment was eligible for ISRS recovery; (b) whether certain regulator stations were eligible for ISRS recovery and (c) whether budgeted ISRS plant could be trued up with actual information and included in the final ISRS amounts approved by the Commission.

3. Laclede and MGE had no reason to believe that any of these issues would need to be relitigated in this case, thus requiring the kind of hearing necessary to make this a contested case. Neither Laclede nor MGE sought to include any telemetry costs in these cases, thus eliminating it as a potential issue. Likewise, there are no new regulator stations in the applications, but even if there were, Laclede and MGE had every reason to believe that ISRS eligibility of its regulator stations would not be an issue since OPC had withdrawn its objection to the inclusion of such costs in the previous ISRS case. Finally, Laclede had no reason to believe that the Commission's 5-0 decision in support of updating ISRS plant would need to be relitigated in this proceeding, even though, as OPC observed in its Motion, OPC has appealed that decision. To the contrary, it was Laclede's expectation that OPC would simply reserve its right to have the treatment of such updated costs in this proceeding made subject to the outcome of that appeal, and that Laclede and MGE would necessarily consent to such a reservation since an appellate decision would have that effect in any event. Such an arrangement would and will completely obviate the useless exercise of re-litigating the exact same issue that the Commission decided less than three months before. Finally, Laclede had no reason to

anticipate that any new issues would need to be litigated in this proceeding. Given all of these facts, Laclede had no reason to believe that these cases were likely to be contested cases, and Laclede was therefore under no obligation to file a 60 day notice. As Laclede stated in its application, it was seeking a waiver only out of an abundance of caution.

4. Should the Commission nevertheless decide that the filing was likely to be a contested case, good cause exists for the Commission to waive the notice required by Rule 4.020(2). First, there is no need to provide OPC a 60 day warning for cases that OPC well knows Laclede Gas and MGE file twice each year with consistent regularity. More importantly, the underlying purpose of the 60 day notice requirement was fulfilled by the fact that neither Laclede entity discussed any ISRS related issues with any Commissioners or their advisory staffs during the 60 days before the filing. If the purpose of the 60 day filing is to draw a line that subjects parties to the rules regarding extra record communications, then this purpose was accomplished, because Laclede engaged in no communications at all. Given this representation of non-communication by Laclede in its applications, the 60 day notice rule serves no purpose in this matter other than to delay the filing of the ISRS case, and OPC's opposition to this request is nothing more than a delay tactic.

5. OPC insists that "strict adherence to the rule is necessary." (OPC Motion, p. 4) However, by its very terms, 4 CSR 240-4.020(2) contemplates that waivers of Section 2 of the rule would be requested often enough to make a request for a waiver one of the three paragraphs covered by that section.

6. OPC is also very critical of the fact that Laclede filed its waiver request with its applications, rather than before them. As Counsel for OPC should know, it is a

very common practice, when requesting permission to file a pleading, to include the pleading itself with the request, such as a request to file an amicus brief. It simply saves time. If the Commission grants the request, the pleading is already on file. If the Commission denies the request, the pleading can be treated as if it was not filed.

7. Another reason OPC's motion should be denied is that, for valuable consideration, OPC committed, in a stipulation approved by the Commission in Laclede Gas' last rate case (Case No. GR-2013-0171), to help process Laclede Gas ISRS cases as quickly as reasonably possible. Given the absence of extra record or any other communications between Laclede and the Commission on ISRS matters, as discussed above, OPC's specious opposition to Laclede's request cannot be viewed as anything other than an intent to obstruct and delay a process that it promised to expedite. This agreement does not require OPC to forego any substantive rights; it simply requires OPC's cooperation in moving these cases along. By seeking denial of a requested waiver of a notice requirement that serves no purpose, OPC is trying to unnecessarily delay the processing of Laclede's ISRS filings, which is the opposite of what it agreed to do. The Commission should not grant a motion that seeks relief in direct conflict with a Commission order approving an agreement.

8. Finally, Laclede notes that the 60 day notice requirement is of questionable legality, especially if applied in a way that unnecessarily impedes the filing of tariffs and other cases. The Commission is a creature of statute, and the Commission has the statutory authority and duty to permit and process tariffs and cases. (See Section 393.140(11) RSMo.) In some instances, such as here, the applicable law also requires that such powers be exercised within a specified period of time. (See Section

393.1015.1(3) (120 days for an ISRS filing); *See also* 393.150 (11 months for other tariff filings)) The Commission statute does not grant the Commission authority to infringe upon the rights of companies to file such cases and tariffs.

9. On a broader note, there is a specific statute in Missouri that sets forth clear guidelines in substantial detail on the subject of *ex parte* communications. (Section 386.210 RSMo.) The 60 day notice requirement, as well as other provisions of the Commission's current *ex parte* rule, impose additional limitations on how and when entities may communicate with the Commission – limitations that go well beyond, and arguably conflict with, those explicitly set out in the statute that governs such interactions. In light of these considerations, the Commission should, at a minimum, not enforce the notice requirement where, as here, it serves no purpose and would operate to frustrate the statutory rights of Laclede and MGE. The Commission should instead grant the waiver requested by Laclede Gas and MGE, assuming such waiver is deemed necessary by the Commission.

**WHEREFORE**, Laclede Gas Company, on behalf of its Laclede Gas and MGE operating units, respectfully requests that the Commission grant the waivers to Section 4.020(2) requested in the ISRS applications.

Respectfully submitted,

**/s/ Rick Zucker**

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the Staff and the Office of the Public Counsel on this 19th day of February, 2016 by hand-delivery, fax, electronic mail or U.S. mail, postage prepaid.

**/s/ Rick Zucker**