

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

In the Matter of an Investigation into)	
the Eligibility of Expenses Recovered)	Case No. GO-2017-0081
Through the Infrastructure System)	
Replacement Surcharge)	

RESPONSE TO MOTION TO CONTINUE DOCKET

COMES NOW Laclede Gas Company (“Laclede” or “Company”) on behalf of itself and its operating unit, Missouri Gas Energy (“MGE”) and in support of its Response to OPC’s Motion to Continue Docket (the “Motion”), states as follows:

1. On March 20, 2017, the Office of the Public Counsel (“OPC”) filed the Motion seeing to continue this investigative docket, which is currently scheduled to expire near the end of March. As OPC stated in its Motion, Laclede and MGE each regularly file two ISRS cases per year, totaling four cases per year, in which OPC fully participates. (Motion, par. 4) So in terms of showing good cause to continue its ISRS investigation, the question for the Commission comes down to whether, over a period of a year, OPC should be seeking information in four ISRS cases, or five.

2. It should also be noted that the current investigation case was initiated last September solely as a way for OPC to obtain discovery during the 60 day period between the filing of Laclede’s notice of intent to file an ISRS case, and the filing of the case itself. In other words, the original “good cause” for the investigation was for OPC to achieve its goal of being able to issue discovery before the utility had commenced its ISRS case. Having successfully achieved its goal, there is no further good cause to pursue. As stated above, the question is

whether four ISRS cases per year provides enough investigatory opportunities, or whether a fifth is needed.

3. In terms of timing, OPC cited the Commission's September 28, 2016 statement that in granting OPC's request to open this case, the Commission said it "does not intend for this to be an open-ended, unlimited grant of authority to Public Counsel, therefore, this file will be closed in six months unless Public Counsel shows good cause for an extension of time." (Motion, par. 3) The Motion, however, virtually proposes the very kind of "open-ended, unlimited" investigation that the Commission was not inclined to permit. In effect, OPC is suggesting that its six month investigation be extended by about 1½ - 2 years, depending on when Laclede makes its first ISRS filing after the conclusion of a rate case that has not even been filed yet. At the same time, OPC fails to support this three to four-fold increase in the investigative period initially approved by Commission with anything approaching the sort of "good cause" justification that would be necessary to warrant such action.

4. OPC's suggestion that it needs more time to conduct an ISRS investigation because it has been too busy reviewing and auditing *actual* Laclede and MGE ISRS filings simply defies logic. In effect, OPC is suggesting that because it is constantly investigating live ISRS filings by issuing data requests, obtaining information, and raising whatever concerns it might have regarding actual ISRS investments, it has not had time to investigate how ISRS work is being conducted. Any problems with how utilities are complying with the eligibility and other requirements of the ISRS law can and will be discovered in the context of actual ISRS filings. Simply put, there is no justification for maintaining an entirely redundant, investigative proceeding for the very same purpose.

5. OPC also claims that a continuance is warranted because of the limited resources OPC has available to participate in ISRS matters, such as the current investigation which it asked the Commission to authorize. (Motion, paragraphs 3 and 4) This is an equally unpersuasive argument for several reasons. First, common sense suggests that maintaining a redundant investigative proceeding that will require OPC and other parties to devote even more resources to ISRS matters is not an effective way to remedy an existing resource constraint.

6. Second, OPC's claims of not having sufficient resources to devote to ISRS matters cannot be squared with OPC's constant practice of re-litigating ISRS issues. For example, OPC has raised the "ISRS update" issue in three consecutive Laclede and MGE ISRS cases. After the Commission ruled against OPC in ISRS 1 and 2 (Laclede and MGE), OPC litigated the update issue again. After the Commission ruled against OPC in ISRS 3 and 4, OPC raised the update issue a third time, and the parties had to file testimony and prepare to litigate it again in ISRS 5 and 6 before OPC withdrew it on January 2, 2017, the day before the hearing.

7. Meanwhile, OPC appealed the Commission's decision on the update issue in ISRS 1 and 2 to the Western District Court of Appeals, which ruled against OPC. OPC then appealed the Commission's same decision in ISRS 3 and 4 to the Western District, effectively asking the court to reverse a decision it had issued five months before. At the March 9, 2017 oral argument, the Court demonstrated less patience for OPC's effrontery than the Commission.

8. In ISRS Cases 5 and 6, 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.

9. 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 relitigating issues multiple times, that party should not be heard to complain about how limited its resources are, especially when those claims are being invoked to impose even greater demands on the resources of other parties by maintaining an entirely redundant proceeding.

10. Finally, OPC's request to continue this investigation is just part and parcel of OPC's ongoing effort to express its antipathy to the ISRS mechanism itself. As the Commission Staff noted in its Brief in Laclede's last ISRS proceeding, OPC has become a "steadfast enemy" of the ISRS mechanism over the past several years, as evidenced by the testimony of its own witness who has suggested that the main, if not exclusive, purpose of the ISRS statute is ". . . to protect shareholders from the effects of regulatory lag" and ". . . that the ISRS has been forced upon Missouri ratepayers." (*see* Staff Brief, page 7, Case No. GO-2016-0333; Tr. 213, l. 21, to 214, l. 25). Again, how OPC chooses to characterize the work of the Missouri General Assembly in enacting the ISRS law is OPC's business, but in this case such characterizations ignore the important safety and other public policy goals underlying that law. At the same time, the Commission has no obligation to enable efforts, such as the current "investigation," that appear to be primarily aimed at frustrating and undercutting the policy choices made by the Missouri General Assembly.

11. In the end, Laclede respectfully requests that the Commission deny OPC's Motion to Continue this docket. If, as a result of its ongoing audit and processing of actual ISRS cases, OPC can identify some issue or concern that cannot reasonably be addressed in individual ISRS

filings and requires some form of investigation not already provided by the discovery process in ISRS cases, it can always request that another investigation be opened. For now, however, there is no good cause for continuing this one.

Respectfully submitted,

/s/ Rick E. Zucker

Rick E. Zucker #49211
Associate General Counsel
Laclede Gas Company
700 Market Street, 6th Floor
St. Louis, MO 63101
(314) 342-0533 (telephone)
(314) 421-1979 (fax)
E-mail:rick.zucker@spireenergy.com

/s/ Michael C. Pendergast

Michael C. Pendergast #31763
Of Counsel
Fischer & Dority, P.C.
423 Main Street
St. Charles, MO 63301
(314) 288-8723 (telephone)
E-mail:mcp2015law@icloud.com

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 24th day of March, 2017 by hand-delivery, fax, electronic mail or U.S. mail, postage prepaid.

/s/ Marcia Spangler