

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

COMES NOW Laclede Gas Company (“Laclede” or “Company”), on behalf of its operating units, Laclede Gas and Missouri Gas Energy (“MGE”), and submits this Response Opposing Public Counsel’s September 12 Motion (the “Motion”) to Investigate the Infrastructure System Replacement Surcharge (“ISRS”). In support thereof, Laclede states as follows:

2. OPC scheduled a discovery conference on August 25 in preparation for asking the Commission to compel Laclede to respond to the DRs. As noted by OPC in its Motion, the regulatory law judge advised OPC to use a separate docket, either a new one or an existing one, to obtain DR responses. OPC then filed the Motion to open an investigation.

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OPC could witness firsthand the safety work Laclede was performing. Laclede has no problem with OPC visiting a work site to observe an ISRS project. Staff has taken at least one such tour to familiarize itself with ISRS-related safety work, and Laclede encourages OPC to do the same. Laclede has already responded to OPC's data request by providing OPC the ISRS schedules for the next three months so that OPC can select the sites it wishes to visit.

3. Having provided the information that was the impetus for the September 12 Motion, the reason for the case has been satisfied and Laclede believes the Motion can be withdrawn and the case closed. However, OPC has expressed no intention of closing this case.

4. In addition to the fact that the rationale for the filing of the Motion has been satisfied, the Motion should also be denied for a number of other reasons. First, there is no point to conducting an investigation because the ISRS issues raised by OPC are all issues that can and have been covered in ISRS cases, each of which requires the Staff to examine the utility's information and issue a recommendation 60 days after the filing of the application.¹ As a party to the case, OPC is also permitted to participate in ISRS cases. For the first decade of ISRS cases, OPC was content to permit Staff to do its statutory duty. If OPC now seeks to play a more active role in ISRS cases, even to the point of conducting a separate and redundant examination of the very matters Staff is already auditing pursuant to its assigned statutory role, OPC should at least operate within the statutory framework established for ISRS filings. Opening a separate investigation adds yet another layer of redundancy that is neither warranted nor a reasonable use of regulatory time and resources.

5. Second, in addition to the examination and recommendation that accompanies every ISRS case, the ISRS Statute expressly allows the Commission to consider in a rate case prudence issues pertaining to the very same investments that were determined to be ISRS-

¹ See 393.1015.2(2) RSMo

eligible in an ISRS case. And if such investments are deemed imprudent in a rate case, then the ISRS costs paid by customers is reversed and refunded to customers through an offset against future ISRS costs.² With rate cases available as one of several consumer protections in the ISRS Statute, an ISRS investigation to further supplement and expand the statutorily prescribed ISRS process is unnecessary and wasteful.

6. Third, the motivation behind the Motion likely stems from OPC's bias against the ISRS legislation, rather than a real need for an investigation. Certainly, as OPC notes, the Missouri legislature has an interest in just and reasonable rates, out of which arises the general principle to consider "all relevant factors." But contrary to OPC's clear preference for this principle as evidenced in paragraph 2 of the Motion, the legislature also has an abiding interest in safe and adequate service, and it is entitled to promote both of those principles on equal terms. The legislature chose to encourage the acceleration of safety expenditures by reducing the time it takes to begin the long period necessary to recover those capital expenditures. The legislature views the ISRS statute as a fair exchange of cost recovery for escalated safety. In enacting the ISRS Statute, the legislature purposefully avoided the costly, time-consuming process necessary to determine earnings levels, either over or under. Basically OPC seeks an investigation of the ISRS because it opposes the decision made by the elected legislators of this state to remove the financial disincentive to expedite safety replacements. OPC wants to impermissibly substitute its own judgment for the legislature's in order to subjugate enhanced safety to a possibility of over-earnings.

7. Paragraphs 3-6 of the Motion are nothing more than truisms about the ISRS statute and make no point that would require any kind of review outside of the statutorily mandated cases that accompany each ISRS filing.

² See 393.1015.8 RSMo

8. In paragraph 7 of the Motion, OPC cites a Commission Report and Order in Case No. GO-2015-0341 (the “ISRS Order”), to falsely assert that the Missouri Supreme Court has held that “the Commission should evaluate the eligibility of gas utility plant projects narrowly in order to ensure compliance with the Legislature’s intent.”³ In fact, the Missouri Supreme Court did *not* decide that the ISRS Statute should be construed narrowly; rather, the Court evaluated the ISRS Statute without a bias either for or against the Statute.⁴ OPC knows that there is no mandate to narrowly construe the ISRS Statute, because OPC is very careful not to cite the Missouri Supreme Court itself for this proposition.

9. Finally, the Motion should be denied because it is based on an unfair and unwarranted attack on the Staff, the only entity in a decade of ISRS cases that took the time to review the applications, examine the information provided by the utilities, visit work sites, and understand the nature of ISRS filings. Under the circumstances, it is not just wrong, but disgraceful for OPC to awake from its decade long slumber and suddenly decide to cast aspersions and insults at the Staff over its ISRS audits. If OPC would like to increase its involvement in ISRS cases, this can be done without further adding to unnecessary duplication, inefficiency and waste by also opening an investigation.

10. For all of these reasons, Laclede respectfully requests that the Commission deny OPC’s Motion to open an investigation of ISRS cases.

³ ISRS Order, p. 16

⁴ *Liberty Energy (Midstates) Corp. v. Public Counsel*, 464 SW3d 520 (Mo. 2015)

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were served electronically to all parties of record on September 22, 2016.

/s/ Marcia Spangler