

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

In the Matter of the Application of Laclede Gas )  
Company to Change its Infrastructure System ) **Case No. GO-2016-0332**  
Replacement Surcharge in its Missouri Gas ) Tariff No. YG-2017-0048  
Energy Service Territory. )

In the Matter of the Application of Laclede Gas )  
Company to Change its Infrastructure System ) **Case No. GO-2016-0333**  
Replacement Surcharge in its Laclede Gas ) Tariff No. YG-2017-0047  
Service Territory. )

**Staff’s Response to Motions by Laclede Gas Company  
and Missouri Gas Energy**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Response* to motions filed by Laclede Gas Company (“LGC”) and Missouri Gas Energy (“MGE”), states as follows:

1. On September 30, 2016, LGC and MGE each filed an *Application* to change their Infrastructure System Replacement Surcharges (“ISRS”), docketed at Cases GO-2016-0333 and GO-2016-0332, respectively.

2. Thereafter, Staff filed its *Recommendation* in each case on December 9, 2016. Also on that day, the Commission by order directed responses to Staff’s *Recommendations* by December 9, 2016.

3. On December 9, 2016, the Office of the Public Counsel (“OPC”) filed its *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing*, which stated objections to the *Applications* filed on September 30, 2016, and also stated as follows with respect to Staff’s *Recommendations*:

On November 29, 2016, the Commission’s Staff filed its Recommendations for the two ISRS petition and recommended the Commission approve the petitions subject to slight adjustments for

depreciation. The Staff Recommendations do not identify the concerns raised by OPC in this motion. Instead, the Staff recommends approval of the petitions including the costs OPC has identified herein as unlawful. The Recommendations show the Staff did not perform thorough audits of Laclede's petitions because it reviewed only a small number of documents that could not possibly have provided the Staff with sufficient information to conclude the work orders Laclede seeks to include in its ISRSs satisfies all eligibility criteria. Accordingly, OPC objects to the Staff Recommendations because they do not represent a thorough audit and because they approve of the costs OPC opposes in this motion.

4. Sections 393.1009, 393.1012 and 393.1015, RSMo., authorize eligible gas corporations to recover certain infrastructure replacement costs by establishing and updating an ISRS.

5. Section 393.1015.2(2), RSMo., provides:

The staff of the commission may examine information of the gas corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1009 to 393.1015, and to confirm proper calculation of the proposed charge, and may submit a report regarding its examination to the commission not later than sixty days after the petition is filed. No other revenue requirement or ratemaking issues may be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of sections 393.1009 to 393.1015.

6. Section 393.1015.2(3), RSMo., provides:

The commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred twenty days after the petition is filed.

7. The two sections set out above describe a carefully conceived, limited contested case procedure. OPC is not mentioned in the statute. Assuming that the legislature intended OPC to play a role in ISRS cases at all, that role is necessarily analogous to and parallel with Staff's role. In other words, OPC's objections to the ISRS applications at issue herein were due by Day 60, just like Staff's report. Day 60 was November 29, 2016, the day on which Staff filed its *Recommendation* in each case.

Instead, OPC filed its *Motion to Deny Proposed Rate Increases and, Alternatively, Motion for Hearing* on Day 70, which was December 9, 2016.

8. The statutory scheme here is clear and unambiguous and the Commission is without authority to depart from it.<sup>1</sup> OPC's objections to the *Applications* were due by Day 60, not Day 70. By missing the statutory deadline, OPC missed its opportunity to object to the *Applications*.<sup>2</sup> Staff therefore joins in the *Response of Laclede Gas Company in Opposition to OPC's December 9 Motion, or in the Alternative, Motion to Strike Certain Issues*.

**WHEREFORE**, Staff prays that the Commission will deny OPC's request for a hearing or, alternatively, strike the issues purportedly raised by OPC; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

s/ Kevin A. Thompson  
**KEVIN A. THOMPSON**  
Chief Staff Counsel  
Missouri Bar Number 36288

Missouri Public Service Commission  
Post Office Box 360  
Jefferson City, Missouri 65102

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<sup>1</sup> ***State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission***, 585 S.W.2d 41, 47 (Mo. banc 1979); ***State ex rel. City of West Plains v. Public Service Commission***, 310 S.W.2d 925, 928 (Mo. banc 1958). "The Public Service Commission is an administrative agency or committee of the Legislature, and as such is vested with only such powers as are conferred upon it by the Public Service Commission Law, by which it was created." ***State ex rel. Laundry, Inc. v. Public Service Com'n***, 327 Mo. 93, \_\_\_, 34 S.W.2d 37, 43 (1931). "Whatever power the [Commission] has must be warranted by the letter of law or such clear implication flowing therefrom as is necessary to render the power conferred effective." ***State ex rel. City of St. Louis v. Public Service Com'n of Missouri***, 335 Mo. 448, 457-58, 73 S.W.2d 393, 399 (banc 1934). The Commission has no authority to "change the rate making scheme set up by the legislature." ***Utility Consumers Council***, *supra*, 585 S.W.2d at 56.

<sup>2</sup> Certainly, the Commission could have considered a request by OPC to file out-of-time on a showing of good cause, had such a showing been made.

Attorney for the Staff of the Missouri  
Public Service Commission.

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail on each of the parties listed in the Service List for this case maintained by the Commission's Data Center **on this 23<sup>rd</sup> day of December, 2016.**

s/ Kevin A. Thompson