

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

In the Matter of the Application of Laclede	)	
Gas Company to Change its Infrastructure	)	<b>Case No. GO-2015-0341</b>
System Replacement Surcharge in its	)	
Laclede Gas Service Territory	)	

**LACLEDE GAS COMPANY’S APPLICATION FOR REHEARING  
AND REQUEST FOR CLARIFICATION**

COMES NOW Laclede Gas Company (“Laclede”) and, pursuant to 4 CSR 240-2.160(1) and Section 386.500 RSMo., files this Application for Rehearing and Request for Clarification of the Commission’s November 12, 2015 Order (“Order”) in this case, and in support thereof, states as follows:

**A. THE APPLICANT**

1. Laclede is a public utility and gas corporation incorporated under the laws of the State of Missouri, with its principal office located at 700 Market Street, St. Louis, Missouri 63101. A Certificate of Good Standing evidencing Laclede's standing to do business in Missouri was submitted in Case No. GF-2013-0085 and is incorporated by reference herein for all purposes. The information in such Certificate is current and correct.

2. In its Laclede Gas service territory, Laclede is engaged in the business of distributing and transporting natural gas to customers in the City of St. Louis and the Counties of St. Louis, St. Charles, Crawford, Jefferson, Franklin, Iron, St. Genevieve, St. Francois, Madison, and Butler in Eastern Missouri, as a gas corporation subject to the jurisdiction of the Commission.

3. Communications in regard to this Application should be sent to the undersigned counsel.

4. Other than cases that have been docketed at the Commission, Laclede has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates within three years of the date of this application.

5. Laclede is current on its annual report and assessment fee obligations to the Commission; no such report or assessment fee is overdue.

**B. THE REQUEST FOR CLARIFICATION**

6. Before addressing the specific errors in the Order, Laclede seeks to clarify the position of the Order on page 16 relating to whether the telemetry equipment was in a deteriorated condition, as set forth in Section 393.1009(5)(a) of the ISRS Statute. The Order states that the specific units at issue “were still operable at the time of replacements. There were no signs of deterioration, such as corrosion.” Laclede requests clarification as to whether the Commission is taking the position that safety-related equipment must not be operable, that is, must have failed, before it can be considered to be in a deteriorated condition for ISRS qualification. While the failure of equipment is certainly strong evidence that such equipment is worn out as well as deteriorated, the mere fact that equipment is still operable is not meaningful evidence that the equipment is not deteriorated and therefore does not qualify for replacement and inclusion in the ISRS. Indeed, Laclede respectfully suggests that any approach which relies on facilities or equipment actually failing before it qualifies for such treatment would be fundamentally incompatible with the safety principles that have and should

continue to govern the efforts of both natural gas operators and the Commission to advance public safety. As discussed more fully below, those efforts are premised on a proactive approach that seeks to replace aging equipment and facilities before they fail so that the potentially catastrophic consequences of such failure can be avoided. Given the importance of this core safety principle, Laclede requests that the Commission grant rehearing of its decision, or at a minimum clarify that the Order is in no way intended to convey that facilities or equipment must fail before they are considered to be deteriorated for ISRS purposes.

### **C. THE APPLICATION FOR REHEARING**

8. Laclede requests rehearing based on errors of fact and law in the Order that render it unlawful, unreasonable and unjust, and unsupported by competent and substantial evidence on the record and adequate findings of fact.

9. A factual error in the Order led the Commission to reach a legal conclusion that is unsupported by competent and substantial evidence. Specifically, the Commission relied on the following testimony in making a mistaken finding of fact which, in turn, led to a conclusion of law that is not based on competent and substantial evidence.

#### Evidentiary Record

Source: Transcript, p. 63, line 15 – page 64, line 9.

Witness: Dr. Patrick Seamands, gas operations expert for Laclede.

Testimony: Dr. Seamands was asked how Laclede decided to replace the two telemetry units. He chose to begin his answer by discussing the regulator station replacement project, in which Laclede is not specifically replacing

telemetry because it is replacing the entire regulator station. Dr.

Seamands then contrasts this with other projects that involve replacing only the telemetry and not the regulator station. Specifically, he states:

“But there are other regulator stations outside of the low-pressure cast iron system that will typically we still have to keep those up, because they're already on the higher pressure system. So **[telemetry at]** those **[stations]** are replaced kind of on an ongoing basis, as the generations of technology change and they wear out and they -- every time you cycle a piece of *electronic equipment*, it's aging on you.” [brackets and emphasis added]

Finding of Fact (Par. 16, page 10):

The telemetric equipment was replaced while Laclede was replacing low-pressure regulator stations with new high pressure regulator stations.

Conclusion of Law (page 17):

The Commission clearly believed that the replacement of regulator stations in the low pressure system area was linked to the replacement of telemetry in this case. The Commission, in turn, concluded that Laclede's true motivation for installing the telemetry was efficiency in installing that equipment at the same time that it was installing regulator stations, and that Laclede was not motivated by the age or impairment of the equipment. Specifically, the Commission stated:

“Since the telemetry equipment replacement occurred at the same time as regulator station upgrades, it appears the timing of the replacement was more likely motivated by the efficiency of changing both at the same time than the age of the equipment or any actual impairment.”

Actual Fact: The telemetry that was replaced was wholly independent of the regulator station replacements. The regulator station replacements are taking place in the oldest part of Laclede's system, that is, in the City of St. Louis and immediately surrounding environs. The two telemetry projects that were in the ISRS request

were located two counties away and were unrelated to the regulator work. One of the telemetry projects was located in the Barnhart area in Jefferson County, and the other was in the St. Peters area in St. Charles County. Laclede is not replacing regulator stations in these two remote areas. Rather, Laclede replaced just the telemetry in these stations, and was motivated to do so by the factors set forth in paragraph 10 below. The two telemetry locations are both pipeline take-points where gas pressure is higher and reliable telemetry is imperative. As Dr. Seamands indicated, Laclede does not have to worry about telemetry when it is replacing the entire regulator station, but still must do periodic telemetry replacements where necessary in areas where regulator stations are not being replaced.

Result: The Order's Conclusions of Law that Laclede replaced telemetry equipment due to the convenience and efficiency of changing both at the same time, and not because the equipment was old and impaired, was based on an incorrect finding of fact and not on competent and substantial evidence.

10. The conclusions of law on page 16-17 of the Order are also insufficient because they never address the actual circumstances faced by Laclede in replacing the telemetry. Taken as a whole, Dr. Seamands' direct, rebuttal and live testimony can be summarized by stating that Laclede replaced the two telemetry units for four main reasons:

- A. The telemetry was at an age where it had completed its expected useful life and expectations for its continued reliable performance were diminished;
- B. The software and other features of the telemetry were obsolete and the model used by Laclede had been replaced 4-5 years ago – in effect, its life-cycle had ended.
- C. The manufacturer had ceased to provide service and support for the old equipment, jeopardizing the Company’s ability to repair these important devices in the event of failure; and
- D. Other telemetric units of similar vintage had begun to experience failures.

11. Rather than view the picture in its entirety in evaluating deterioration, the Order appeared to take a ‘divide and conquer’ approach in concluding that Laclede failed to show deterioration. At the bottom of page 16, the Order states that old software and a lack of service support (Reasons B and C) is not sufficient to demonstrate deterioration. The Order then states on page 17 that “age alone (Reason A) does not justify” deterioration. Next, the Order states that a single event, the manufacturers discontinued support (Reason C again), “cannot alone show impairment or deterioration.” Laclede’s Reason D above, that other similar units had begun to fail, was made a finding of fact but the law was never applied to it. And nowhere did the Order assemble all four conditions for consideration or explain why they did not cumulatively justify a finding of deterioration, yet all four conditions are precisely the situation Laclede actually faced in

deciding that the telemetric equipment warranted replacement and was ISRS-eligible as deteriorated.

12. The Order also erred in concluding that the telemetry was not deteriorated because it (i) was still operable at the time of replacement; and (ii) showed no signs of deterioration, such as corrosion.

13. If, as the Commission may be implying, equipment cannot be considered to be in a deteriorated condition simply because it is still capable of operating, then the phrase “in deteriorated condition” has no meaning. To the contrary, defining deterioration as meaning that a particular asset must be useless or inoperable completely ignores the dictionary definition of the term, as adopted by the Missouri Supreme Court, which explicitly contemplates that the deteriorated object is still functioning, although it may have lost value, worsened or become impaired. In other words, “to grow worse, to make inferior, to become impaired” cannot mean to be utterly useless. (*Liberty Utilities v. Office of Public Counsel*, 464 S.W.3d 520, 524-25 (Mo. Banc 2015)<sup>1</sup>

14 Likewise, if software and computer equipment must show signs of corrosion to be deteriorated, then the phrase “in deteriorated condition” becomes equally meaningless as applied to such items. By its very nature, computer electronic equipment tends to deteriorate by the wearing down of internal parts or by obsolescence, not rust or corrosion. Given these considerations, the Commission’s attempt to apply a factor such

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<sup>1</sup> Saying that telemetry equipment is not in a deteriorated condition until it actually fails is akin to saying that tires with little or no tread are not in deteriorated condition until they actually blow out or go flat. Anyone purchasing a tire with little or no tread on it would obviously conclude that they were in deteriorated condition and reflect that assessment in the price offered to buy the tire. Moreover, any person who takes safe driving seriously would not adopt a practice of simply driving on tires until they blow out – the very practice that the Commission would be adopting if the Order means that the telemetry equipment must be inoperable to be deteriorated.

as corrosion to the determination of whether such equipment is in a deteriorated condition is clearly incorrect.

15. Indeed, far more relevant to such a determination are the factors discussed by Dr. Seamands in his testimony as well as the Commission's own prior orders establishing the expected useful lives for such items. According to those prior orders, computer software and equipment have expected useful lives of 5 to 10 years – useful lives that have been determined based on the recommendations of depreciation experts who have extensively studied the operation of such items under actual conditions.<sup>2</sup> At a minimum, the Order should have explained how an item such as telemetric equipment can simultaneously be considered not deteriorated enough to justify replacement under the ISRS Statute, when that same item has already exceeded the Commission's own assessment of how long it should typically be expected to stay in service. By not providing such an explanation or even addressing the issue, the Order is unsupported by adequate findings of fact.

16. The Commission's apparent determination that assets exceeding their expected useful life do not qualify for ISRS replacement because they have not yet failed is also contrary to the very essence of any effective safety program. Simply put, no one would take the position that public safety can be protected by an approach that waits for a pipeline segment, regulator station, service line, or other component of a utility's distribution system to fail – with all of the potentially catastrophic consequences such an event entails - before it is a candidate for replacement. Indeed, almost all of the Commission's safety replacement programs are premised on the need to avoid that very result. Given this core safety principle, Laclede should not be expected to wait until the

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<sup>2</sup> See Stipulation and Agreement, Attachment 4, approved by the Commission in Case No. GR-2013-0171.



telemetric equipment actually loses the vital ability to monitor and control the safe distribution of gas before pronouncing it deteriorated. Rather, the competent and substantial evidence, as testified to by Dr. Seamands – the only technical expert in the case -- showed that Laclede expects this important critical safety equipment to last roughly 10 years, after which he – and this Commission through its prior depreciation orders – can reasonably expect that it will begin to fail.

17. In summary, by definition, deteriorated equipment has grown worse, but can still operate. Since the telemetric equipment will continue to operate until the moment it stops operating, it enters into a deteriorated condition somewhere in between the time it is new and the time it is inoperable. It is difficult to know where to draw that line, but Laclede asserts that safety-related equipment that (i) has exceeded its useful life, (ii) is no longer being serviced or repaired by its manufacturer, (iii) is obsolete and (iv) has similar models experiencing failure, has suffered an impairment in quality, state or condition, has become worsened, has become inferior in quality and value, and is clearly and convincingly on the deteriorated side of that line. The fact that it may last 1, 2 or 4 years past this date does not disqualify it from being deteriorated earlier.

18. The Order also errs as a matter of law on page 16 by concluding that the Missouri Supreme Court decision in *Liberty* makes it clear that the Commission should construe ISRS eligibility narrowly in order to ensure compliance with the legislature's intent. There is no basis in the *Liberty* decision or in the Statute to conclude that the ISRS law should be construed narrowly, or any way other than applying the normal definition of its words, as the Supreme Court did. Although the order appears to adopt OPC's argument that the ISRS statute should be construed narrowly because it is an

exception to the single issue ratemaking standard in Section 393.270, there is no support for this concept. Certainly, Section 393.270 can and has been construed by the courts as evidencing a legislative intent that rate cases take into account all relevant factors. But other statutory provisions passed by the legislature reflect other, equally important public policy objectives, including the critical public policy objective of ensuring that utility service be provided in a “safe and adequate” manner. Section 393.130 RSMo. It is within this context of multiple public policy objectives that the Missouri General Assembly enacted the ISRS statute which, among other things, encourages and promotes increased spending on safety investments. Although the legislature was well aware of Section 393.270 at the time it passed the ISRS legislation, nowhere in the ISRS statute is there any indication that the legislature considered that statute and the public policy goals it promotes to be inferior to those set forth in Section 393.270. In short, neither OPC nor anyone else can proclaim that the General Assembly prefers a protocol for interpreting the statutes it has written where the goal of ensuring safe and adequate service is trumped by the goal of considering all relevant factors when setting rates. If anything, the overwhelming trend in the regulation of natural gas service throughout the country is to elevate safety over such considerations.

19. Finally, Laclede objects to the Order’s denial of Laclede’s motion for expedited treatment. Laclede has cited on many occasions the agreement among Staff, Laclede and OPC, and approved by the Commission, under which Laclede agreed to split the difference on a tax issue in exchange for the parties’ commitment to expedite implementation of Laclede ISRS cases. OPC may view the agreement as the Staff giving up on one-half of the value of the tax adjustment. Regardless of whether you view the

tax issue as half full or half empty, there is only one way to view the commitment to expedite. Staff has consistently made good faith efforts to cooperate in expedited treatment, which Laclede appreciates. OPC originally honored the agreement, but over the recent past has increasingly taken positions that deprive Laclede of the benefit of its bargain. And now, by its successful opposition to Laclede's motion for expedited treatment on very flimsy grounds, OPC has effectively treated this agreement as if it did not exist.

### **CONCLUSION**

In conclusion, Laclede respectfully requests that the Commission clarify and/or rehear the issue relating to telemetric equipment and revise its Order to find such equipment to be ISRS eligible.

Respectfully submitted,

**/s/ Rick Zucker**

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ATTORNEY FOR LACLEDE GAS COMPANY  
AND MISSOURI GAS ENERGY

### **CERTIFICATE OF SERVICE**

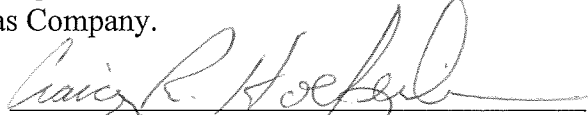
The undersigned certifies that a true and correct copy of the foregoing pleading was served on the General Counsel of the Staff of the Missouri Public Service Commission, and the Office of the Public Counsel, on this 30th day of November, 2015 by hand-delivery, fax, electronic mail or by regular mail, postage prepaid.

**/s/Marcia Spangler**

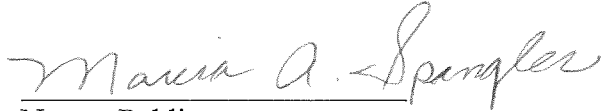
**VERIFICATION**

State of Missouri            )  
  )  
City of St. Louis            )            ss

I, Craig R. Hoeflerlin, being of lawful age state: that I am Vice-President, Operations Services of Laclede Gas Company; that I have read the foregoing Application; that the statements and information set forth in the Application are true and correct to the best of my information, knowledge and belief; and, that I am authorized to make this statement on behalf of Laclede Gas Company.

  
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Craig R. Hoeflerlin

Subscribed and sworn to before me this 30th day of November, 2015.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 9/24/18\_\_\_\_\_

