

**Exhibit No.:**

425

**Issue(s):**

Severance Costs/  
Hydrostatic Testing-Rebuttal to  
Laclede/MGE witnesses Noack and Lauber/  
Staff's Change in Ratemaking Position  
for Laclede's Natural Gas Inventory/  
Accumulated Deferred Income Taxes/  
Cost Allocation Manual Update  
and Affiliate Transaction Audit/  
SERP Capitalization/  
SERP Expense  
Hyneman/Surrebuttal  
Public Counsel  
GR-2017-0215  
GR-2017-0216

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Service Commission

**SURREBUTTAL TESTIMONY**

**OF**

**CHARLES R. HYNEMAN**

Submitted on Behalf of the Office of the Public Counsel

**LACLEDE GAS COMPANY  
MISSOURI GAS ENERGY**

CASE NO. GR-2017-0215

CASE NO. GR-2017-0216

November 21, 2017

OPC Exhibit No. 425  
Date 12-15-17 Reporter AF  
File No. GR-2017-0215, GR-2017-0216

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

In the Matter of Laclede Gas Company's     )  
Request to Increase Its Revenues for Gas     )  
Service     )     Case No. GR-2017-0215


In the Matter of Laclede Gas Company     )  
d/b/a Missouri Gas Energy's Request to     )  
Increase Its Revenues for Gas Service     )     Case No. GR-2017-0216

**AFFIDAVIT OF CHARLES R. HYNEMAN**

STATE OF MISSOURI     )  
   )     ss  
COUNTY OF COLE     )

Charles R. Hyneman, of lawful age and being first duly sworn, deposes and states:


1. My name is Charles R. Hyneman. I am the Chief Public Utility Accountant for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Charles R. Hyneman, C.P.A.  
Chief Public Utility Accountant

Subscribed and sworn to me this 21<sup>st</sup> day of November 2017.



JERENE A. BUCKMAN  
My Commission Expires  
August 23, 2021  
Coke County  
Commission #13764037

  
\_\_\_\_\_  
Jerene A. Buckman  
Notary Public

My Commission expires August 23, 2021.

## TABLE OF CONTENTS

<u>Testimony</u>	<u>Page</u>
Introduction	1
Severance Costs	2
Hydrostatic Testing-Rebuttal to Laclede/MGE witnesses Noack and Lauber	3
Staff's Change in Ratemaking Position for Laclede's Natural Gas Inventory	13
Accumulated Deferred Income Taxes	23
Cost Allocation Manual Update and Affiliate Transaction Audit	26
SERP Capitalization	30
SERP Expense	33

**SURREBUTTAL TESTIMONY**

**OF**

**CHARLES R. HYNEMAN**

**LACLEDE GAS COMPANY  
MISSOURI GAS ENERGY**

CASE NO. GR-2017-0215  
CASE NO. GR-2017-0216

1 **Introduction**

2 **Q. Please state your name, title and business address.**

3 **A. Charles R. Hyneman, Chief Accountant, Office of the Public Counsel (“OPC” or “Public**  
4 **Counsel”), P.O. Box 2230, Jefferson City, Missouri 65102.**

5 **Q. Are you the same Charles R. Hyneman who filed direct and rebuttal testimonies in these**  
6 **proceedings?**

7 **A. Yes, I am.**

8 **Q. Please list the witnesses who will be filing surrebuttal testimony on behalf of the OPC**  
9 **and the issues they will be addressing.**

10 **A. OPC witnesses and the surrebuttal issues are shown below:**

<b>OPC Witness</b>	<b>Issues Addressed in Surrebuttal Testimony</b>
Amanda Conner	Rate Case Expense/ New Credit Card Fees/Severance/Management Expenses/Cash Working Capital (“CWC”)
John Riley	GSIP/St Peters Lateral expenses/Kansas Property Taxes/Off-system sales and capacity release/GTI dues lobbying portion
Dr. Geoff Marke	Pay for Performance Metrics/Alagasco & EnergySouth savings/Decoupling/Rate Design/Economic Development Rider/Energy Efficiency
Ara Azad	New Blue and other Corporate Cost Allocations/CAM Noncompliance/Discovery Issues with Laclede/Affiliate Transactions Noncompliance and Request for Audit
David Pitts	Pensions and OPEBs/Prepaid Pension Asset
Michael Gorman	Capital Costs and Capital Structure

Charles Hyneman	Severance/Hydrostatic Testing/Gas Inventory Carrying Costs/Accumulated Deferred Income Taxes/Laclede CAM and Affiliate Transaction/Cost Allocations Audit/ SERP Capitalization/SERP Expense
Lena Mantle	Energy Efficiency
John Robinett	Combined Heat & Power (CHP)/AMR Meter Interface Unit/ISRS Plastic Pipe Issue

1 **Severance Costs**

2 **Q. Is it OPC's position that no severance costs should be included in MGE and Laclede's**  
3 **cost of service in this case?**

4 A. Yes, it is. OPC's severance cost adjustment is sponsored by OPC witness Amanda Conner as  
5 discussed in her Rebuttal and Surrebuttal testimony and is based on longstanding Commission  
6 practice that the utility recovers severance payments in rates through regulatory lag. In fact,  
7 due to this lag, utilities recover significantly more from ratepayers than the actual dollar  
8 amount of the severance payments made.

9 The Commission also noted that shareholders, not ratepayers, are the beneficiaries of  
10 severance payments. In her testimony in this case, OPC witness Conner stated that the  
11 Commission found that typical utility severance agreements include management and  
12 shareholder-protection clauses, which restrict the severed employee's freedom to speak  
13 negatively about the utility. The severance agreements also restrict the severed employee's  
14 freedom to bring legal actions against the utility for issues such as age discrimination, sexual  
15 harassment, or other discrimination issues.

16 **Q. Do Laclede and MGE severance agreements include these type of management and**  
17 **shareholder protection clauses?**

18 A. Yes, they do.

19 **Q. At page 9 of his rebuttal testimony, MGE and Laclede witness Noack states his position**  
20 **on rate recovery of severance payments. Please describe his position.**

21 A. Mr. Noack explains he believes future customers will benefit through fewer employees in the  
22 future. Therefore, ratepayers should be forced to pay not only for the severance payments, but

1 also should continue to pay for the salary and benefits that are included in utility rates for the  
2 severed employee.

3 **Q. Over the past 24 years, have you audited the severance payments and severance policies**  
4 **of all major utilities in Missouri?**

5 A. Yes, I have.

6 **Q. Is Laclede and MGE seeking recovery of severance expenses in these rate cases?**

7 A. Yes. Laclede and MGE continue to seek rate recovery of severance expenses in this rate case  
8 despite a longstanding Commission practice of not allowing severance payments in utility  
9 rates. To my knowledge, the Commission has not allowed rate recovery of severance  
10 expenses at least since 2006 when it ruled in its Report and Order in Case No. ER-2006-0314  
11 that severance expense is not an expense that benefits ratepayers.

12 **Q. What are your findings?**

13 A. My findings from auditing utility severance payments for over 20 years is that utility  
14 severance payments are regularly recovered several times over through regulatory lag. This  
15 finding is actually a mathematical fact that cannot be reasonably disputed. For example, if  
16 an employee received a severance of one year's salary of \$100,000, the amount being  
17 recovered in rates for that one employee, including benefits, is at least \$150,000 per year.  
18 Under this example, the utility over-recovers the cost of the severance payment in less than  
19 one year. Given the typical time period between rate cases of three to four years, the utility  
20 will almost certainly significantly over-recover its severance payments in rates collected from  
21 customers.

22 **Hydrostatic Testing-Rebuttal to Laclede/MGE witnesses Noack and Lauber**

23 **Q. Is hydrostatic testing of a pipeline a maintenance expense?**

24 A. Yes. Hydrostatic testing is required under the requirements of the Federal Energy Regulatory  
25 Commission's ("FERC") Uniform System of Accounts ("USOA") to be accounted for as a  
26 maintenance expense. The FERC's accounting rules provide that costs incurred to inspect,

1 test and report on the condition of plant to determine the need for repairs or replacements are  
2 to be charged to maintenance expense in the period the costs are incurred. This FERC rule  
3 can be found in USOA Operating Expense Instructions No.2, *Maintenance*, Item 2 of 18  
4 C.F.R. Parts 101 and 201 and Instructions for Operating Revenues and Operating Expenses  
5 4-4, paragraph A of Part 352

6 The FERC's accounting rules provide that costs incurred to inspect, test and report on the  
7 condition of plant to determine the need for repairs or replacements are to be charged to  
8 maintenance expense. Accordingly, costs to inspect affected pipeline segments under an  
9 Integrity Management program must be charged to maintenance expense in the period the  
10 costs are incurred.

11 In enforcing its own USOA, FERC made it very clear that, with rare exceptions which involve  
12 major rehabilitation projects, all utility hydrostatic testing expense is a maintenance expense.  
13 FERC also makes it clear that with very limited exceptions, no hydrostatic testing expenses  
14 are allowed to be capitalized to construction projects.

15 **Q. Did the Commission determine that hydrostatic testing expense is in fact a maintenance**  
16 **expense and not a cost that should be capitalized to construction projects?**

17 **A.** The Commission reached this conclusion in its Report and Order in MGE and Laclede's 2016  
18 Infrastructure System Replacement Surcharge ("ISRS") case, File Nos. GO-2016-0332 and  
19 GO-2016-0333 ("2016 ISRS Cases") (See Schedule CRH-S-2). In this Report and Order the  
20 Commission cited to OPC Exhibit 5, which is a FERC Order clearly stating that hydrostatic  
21 testing is a maintenance expense and is not allowed to be capitalized to construction projects.  
22 The Commission also relied, in part, upon these FERC rules in reaching the conclusion that  
23 hydrostatic testing is not an appropriate ISRS expense. I will describe these FERC accounting  
24 rules later in this testimony.

1 **Q. Do Commission rules require Laclede and MGE to comply with the FERC USOA?**

2 A. Yes. MGE and Laclede are required to comply with 4 CSR 240-40.040 Uniform System of  
3 Accounts—Gas Corporations.

4 **Q. Has Laclede and MGE either misinterpreted or disregarded the Commission’s ISRS**  
5 **Order and its USOA Rules by continuing to capitalize the very hydrostatic testing**  
6 **maintenance expenses the Commission determined should be charged to expense in the**  
7 **period incurred?**

8 A. Yes, they have.

9 **Q. What is the revenue requirement value of this issue?**

10 A. MGE witness Noack states, at page 17 lines 6 through 10 of his rebuttal testimony, that the  
11 net revenue requirement impact of expensing hydrostatic testing expenses (as ordered by the  
12 Commission) as opposed to capitalizing these charges to plant in service (as prohibited by the  
13 Commission) is \$2,783,123. Mr. Noack calculates this amount by subtracting the revenue  
14 requirement of including this pipe testing in plant in service. However, this number is not  
15 correct and appears to be an error.

16 **Q. Why does it appear Mr. Noack’s estimate of the revenue requirement value of this issue**  
17 **is an error?**

18 A. In his rebuttal testimony, Mr. Noack states that MGE capitalized \$3,152,252 of hydrostatic  
19 testing “during the test year.” However, in OPC data request (DR) 1054, MGE was asked to  
20 provide, for the period 2004 through 2016, the work order number and date the project was  
21 placed in service for each project that included hydrostatic testing. MGE was also asked to  
22 provide the dollar amount charged to the work order for the hydrostatic testing. MGE stated  
23 in response to this data request that the total hydrostatic testing cost it incurred over the twelve  
24 year period 2004 through 2016 was \$4,149,079. This averages to an annual cost of \$349,756.  
25 MGE’s response to OPC data request 1054 is attached to this testimony as Schedule CRH-S-  
26 3.



1 **Q. Did OPC seek clarification and verification of the accuracy of the information MGE**  
2 **provided in response to OPC 1054?**

3 A. Yes. OPC issued DR 1054.1 ("OPC 1054.1) to verify the accuracy of the information  
4 provided by MGE in response to OPC 1054. In its response to OPC 1054.1 MGE corrected  
5 its response to OPC 1054 by adding two more work orders to the 2004-2016 hydrostatic  
6 testing work orders it provided in its response to OPC DR No. 1054. MGE also stated in  
7 response to OPC 1054.1 that it incurred \$704,541 of hydrostatic testing cost in 2012 and  
8 \$701,337 in 2013.

9 **Q. Based on MGE's updated information on its 2004-2016 hydrostatic testing costs is OPC**  
10 **willing to update its adjustment?**

11 A. Yes. Adding the \$1,405,878 amount in OPC 1054.1 to the \$4,149,079 provided in OPC 1054  
12 results in a total amount of \$5,554,957. Dividing this amount over the period MGE incurred  
13 this amount of 12 years results in an annual expense of \$462,913.

14 **Q. Does OPC propose an alternative adjustment?**

15 A. Yes. While OPC asked for hydrostatic testing costs for the period of 2004 through 2016,  
16 MGE only provided costs from the period 2012 through 2016. This indicates that either MGE  
17 did not perform hydrostatic testing prior to 2012 or it has no records of performing this test  
18 prior to 2012. Given these circumstances, OPC is willing to normalize MGE's hydrostatic  
19 testing expense over the period 2012-2016, or 5 years. This results in an annual normalized  
20 amount of \$1,110,991 ( $\$5,554,957/5$  years).

21 **Q. With OPC's updated adjustment, what is the revenue requirement impact of this issue**  
22 **from OPC's perspective?**

23 A. Assuming Mr. Noack's numbers in his rebuttal testimony are correct, and using Staff's capital  
24 structure and capital costs, OPC's adjustment increases MGE's revenue requirement in this  
25 rate case by \$741,862.

1 **Q. If the Commission is consistent with its GO-2016-0332 and GO-2016-0333 Report and**  
2 **Order and rules in favor of OPC on this issue, what adjustment is MGE required to**  
3 **make to its books and records and its cost of service in this rate case?**

4 A. In return for including \$1,110,991 in annual hydrostatic testing maintenance expense in its  
5 cost of service in this rate case, MGE would be required to correct its books and records by  
6 removing all erroneously-capitalized-hydrostatic-testing costs charged to its books and  
7 records during the period 2012-2016 (and prior to 2012 if any such amount exists).

8 **Q. In addition to Mr. Noack, did another Laclede witness address the issue of hydrostatic**  
9 **testing in rebuttal testimony?**

10 A. Yes. Laclede witness Mark D. Lauber addresses this issue at page 3 line 16 through page 10  
11 line 2 of his rebuttal testimony. Beginning at page 3 line 16 through page 6 line 8 he provides  
12 a general description of hydrostatic testing as well as several unsupported statements about  
13 hydrostatic testing. At page 6 line 9 he begins a discussion about his understanding of the  
14 proper accounting and ratemaking treatment of hydrostatic testing maintenance expenses.

15 **Q. In your opinion is Mr. Lauber qualified to express an opinion about the proper**  
16 **accounting and ratemaking treatment of Hydrostatic testing maintenance expense?**

17 A. No. At page 1 and 2 of his rebuttal testimony he provides his education and professional  
18 experience. His testimony reflects that he has no accounting or auditing education or  
19 experience and no utility ratemaking experience. It does not appear that Mr. Lauber has any  
20 knowledge of or has even read the FERC USOA, or the FERC's interpretation of its USOA,  
21 which, under Commission rules, dictates how MGE is to account for this hydrostatic testing  
22 maintenance expense.

23 Based on his education and experience, Mr. Lauber is qualified to describe the engineering  
24 aspects of hydrostatic testing, but he is not qualified to provide an expert opinion on the  
25 accounting and ratemaking aspects of this maintenance expense. I believe the Commission  
26 should consider Mr. Lauber's lack of education and experience in this area when it considers

1 his accounting and ratemaking conclusions and recommendations on this issue of hydrostatic  
2 testing maintenance expense.

3 **Q. Is it your understanding that the Commission fully supports rate recovery of reasonable**  
4 **and necessary hydrostatic testing costs as maintenance expenses?**

5 A. Yes.

6 **Q. Does OPC support rate recovery of reasonable and necessary hydrostatic testing costs**  
7 **as maintenance expenses?**

8 A. Yes.

9 **Q. Has the Commission ever proposed, or is OPC proposing in this rate case, any action**  
10 **that would affect in any manner how and when MGE performs hydrostatic testing?**

11 A. None whatsoever.

12 **Q. At page 4 line 15 Mr. Lauber states that the cost of hydrostatic testing is included with**  
13 **the cost of constructing a pipeline. Is he correct?**

14 A. No. In the 2016 ISRS Case OPC provided substantial evidence to the Commission, which  
15 proved FERC requires substantially all hydrostatic testing costs (with very limited exceptions)  
16 to be treated as a routine and ordinary maintenance expense. In its Reports and Orders in the  
17 ISRS Case, the Commission agreed with OPC that FERC does not allow for the capitalization  
18 of hydrostatic testing and the Commission appropriately referred to hydrostatic testing as an  
19 expense, not a capital item.

20 As a basis of its conclusions in its ISRS Case Report and Orders, the Commission referenced  
21 OPC Exhibit 5, which is an *Order on Accounting for Pipeline Assessment Costs*, FERC  
22 Docket No. AI05-1-000 (issued June 30, 2005) ("FERC Order"). In its ISRS Case Report  
23 and Order the Commission ruled:

1 The evidence shows that nothing physically is added to or taken away  
2 from the pipes that are tested. If the testing shows no leaking or  
3 deterioration the maximum allowable operating pressure is  
4 determined, but nothing further occurs.

5  
6 The testing provides confidence to the company that the pipeline is  
7 expected to last for an additional period of years, but without first  
8 bearing some similarity to relining, insertion, or joint encapsulation  
9 projects, that extra confidence is irrelevant to ISRS eligibility.

10  
11 Consistent with this conclusion, the Federal Energy Regulatory  
12 Commission (FERC) has determined that hydrostatic testing does not  
13 extend the useful life of a pipeline. That determination was expressly  
14 for the purpose of expanding on accounting guidance that had been  
15 previously issued in an "accounting release."  
16

17 **Q. What is the difference between a period cost (a cost charged to expense in the period**  
18 **incurred) and a capital cost (a cost capitalized or deferred and amortized, or reflected**  
19 **in expense, in future periods)?**

20 **A.** The difference is that the incurrence of period costs (expenses) do not provide any measurable  
21 benefit for customers in future utility periods. As such, capitalization of period costs is  
22 improper. The matching principle, which is a bedrock principle of accounting and ratemaking,  
23 also requires costs which provide benefits to future periods be recognized and matched with  
24 the revenues of those future periods.

25 **Q. Please summarize the FERC's findings and ruling that hydrostatic testing is a**  
26 **maintenance expense.**

27 **A.** On November 5, 2004, the FERC published a notice of a proposed accounting release that  
28 provided FERC's accounting guidance on the cost of performing pipeline assessment  
29 techniques like hydrostatic testing. FERC indicated it would require that an entity recognize  
30 costs incurred in performing pipeline assessments, which are part of a pipeline integrity  
31 management program, as maintenance expenses. This accounting release was titled

1        “*Accounting for Pipeline Assessment Costs, Notice of Proposed Accounting Release, Docket*  
2        *No. AI05-1-000.*”

3        On June 30, 2005, the FERC issued its *Order on Accounting for Pipeline Assessment Costs*  
4        in Docket No. AI05-1-000. This FERC Order expanded on the accounting guidance in the  
5        proposed accounting release and addressed the proper accounting for costs that pipeline  
6        operators will incur in implementing all aspects of a pipeline integrity management program.  
7        The FERC Order also concluded that certain costs incurred related to a pipeline integrity  
8        management program should be capitalized, while others should be expensed. A utility  
9        requested rehearing of the FERC Order and FERC denied that appeal on September 19, 2005  
10       in AI05-1-001, *Order Denying Rehearing and Providing Clarification.*

11    **Q. Please state the FERC’s accounting rules for hydrostatic testing expenses.**

12    A. In general, FERC views hydrostatic testing as a work activity that qualifies under this section  
13       of the USOA as maintenance. FERC’s USOA accounting rules provide that costs incurred to  
14       inspect, test and report on the condition of plant to determine the need for repairs or  
15       replacements are to be charged to maintenance expense in the period the costs are incurred.  
16       FERC’s USOA Operating Expense Instruction No. 2, *Maintenance*, provides in part that  
17       “costs incurred to inspect, test and report on the condition of plant to determine the need for  
18       repairs or replacements” are to be charged to maintenance expense. Based on these USOA  
19       accounting rules the FERC determined that costs to inspect affected pipeline segments under  
20       a integrity management program must be charged to maintenance expense in the period the  
21       costs are incurred.

22    **Q. Please summarize FERC’s June 30, 2005 *Order on Accounting for Pipeline Assessment***  
23       ***Costs* in Docket No. AI05-1-000.**

24    A. In paragraph 21 of the FERC Order, the FERC provided a strong foundation on which it, at  
25       least in part, concluded that hydrostatic testing is a period cost (a cost charged to expense in

1 the period incurred) and not a capital cost. FERC determined that “inspecting or assessing a  
2 pipeline segment does not by itself increase the useful life of a pipeline asset or improve its  
3 efficiency.”

4 21. ...Broadly speaking, pipeline assessment activities provide  
5 information about the condition of existing facilities to ensure that  
6 operation of the pipeline remains within established safety parameters.  
7 The act of inspecting or assessing a pipeline segment does not by itself  
8 increase the useful life of a pipeline asset or improve its efficiency.  
9

10 In paragraph 22 FERC provided very clear guidance on what pipeline inspection costs cannot  
11 be capitalized and those are costs that are related to a process of continual evaluation and  
12 assessment and not a one-time major rehabilitation project. Further, in paragraph 25 FERC  
13 states that maintaining the integrity of a pipeline is a maintenance activity.

14 In paragraph 27, FERC restates its position that costs incurred to inspect, test and report on the  
15 condition of plant to determine the need for repairs or replacements are to be charged to  
16 maintenance expense.

17 27. ...the Commission’s accounting rules provide that costs incurred  
18 to inspect, test and report on the condition of plant to determine the  
19 need for repairs or replacements are to be charged to maintenance  
20 expense. Accordingly, costs to inspect affected pipeline segments  
21 under an IM program must be charged to maintenance expense in the  
22 period incurred.  
23

24 **Q. At page 6 line 13 Mr. Lauber states that you are proposing to “disallow” certain  
25 hydrostatic testing costs. Is this statement true?**

26 **A.** No, not at all. I am proposing only to correct an accounting error made by MGE and Laclede  
27 management. The Commission itself indicated that MGE and Laclede made an accounting  
28 error by relying on the very same FERC document that proves this error. My accounting and  
29 ratemaking proposal for MGE’s hydrostatic testing costs in this case does not disallow one  
30 dollar of costs. In fact, contrary to Mr. Lauber’s testimony that I am proposing to disallow

1 costs, my proposal on hydrostatic testing in this case actually increases MGE revenue  
2 requirement, a fact even confirmed by MGE witness Noack in his rebuttal testimony.  
3

4 **Q. Should MGE's adjustment to its books and records to remove capitalized hydrostatic**  
5 **testing costs be considered a correction of an error?**

6 A. Yes. MGE failed to record hydrostatic testing costs as a maintenance expense under the  
7 FERC USOA. MGE was even advised by the Commission in its 2016 ISRS Order of the  
8 relevance of this accounting for hydrostatic testing. Since MGE will not correct this error on  
9 its own, the Commission should order MGE to correct this accounting error.

10 **Q. Is the Commission bound by the requirements of the FERC USOA outside of a rate case**  
11 **or other rate proceeding?**

12 A. No. For accounting purposes both the Commission and regulated Missouri utilities are  
13 required by Commission rule to comply with the FERC USOA (electric and gas utilities) and  
14 the NARUC USOA (water utilities). MGE and Laclede are required to comply with 4 CSR  
15 240-40.040 Uniform System of Accounts—Gas Corporations. The Commission rule  
16 requiring compliance with the USOAs includes specific language that states the Commission  
17 is not bound by the USOA for ratemaking purposes.

18 **Q. If the Commission disagrees with the FERC and finds that hydrostatic testing is a type**  
19 **of cost that should be capitalized, can it order this treatment in this rate case?**

20 A. Yes, it can. The Commission is certainly free to disagree with the FERC on the proper  
21 accounting treatment of hydrostatic testing expenses. If the Commission concludes that  
22 hydrostatic testing expenses are in the nature of capital costs, they can so order MGE to  
23 capitalize this costs in this rate case. It is my understanding that such an order will constitute  
24 a waiver or variance from the USOA and MGE will be allowed to account for these expenses  
25 as a capital cost in the future. I however, agree with the FERC and the FERC USOA cannot  
26 see any reasonable accounting or ratemaking justification for such a conclusion. The

1 Commission recognizes that hydrostatic testing adds no value to the construction project.  
2 With this conclusion, I cannot see how the Commission can now classify this maintenance  
3 expense as a capital expense.

4 **Q. Should any decision on the appropriate accounting and ratemaking treatment of MGE's**  
5 **hydrostatic testing expenses in this rate case affect the Commission's determination that**  
6 **hydrostatic testing expenses are not ISRS eligible??**

7 **A.** No. In its Report and Order in Laclede and MGE's 2016 ISRS case, the Commission found  
8 that hydrostatic testing expenses do not meet the statutory eligibility requirements for an  
9 ISRS. If the Commission allowed MGE to capitalize its hydrostatic testing costs in this rate  
10 case, this decision should not affect, in any manner, the fact that hydrostatic testing costs are  
11 not ISRS eligible and MGE should not seek to include hydrostatic testing expenses in future  
12 ISRS Applications.

13 **Staff's Change in Ratemaking Position for Laclede's Natural Gas Inventory**

14 **Q. Please summarize this issue.**

15 **A.** At least for some period prior to 2005 the Commission did not include natural gas inventory  
16 carrying costs in the PGA as a natural gas cost. In its January 16, 2003 Report and Order in  
17 Laclede Gas Company Case No. GT-2003-0117 (Schedule CRH-S-4) the Commission listed  
18 the types of costs that it would allow in a PGA. At page 12 of its Report and Order the  
19 Commission limited the specific types of costs allowed to be recovered in a PGA to the cost  
20 of the commodity itself, interstate pipeline transportation charges, and interstate storage  
21 charges. This Commission list did not include a utility's carrying cost of maintaining natural  
22 gas inventory:



1           The Commission is unwilling to adopt a policy that allows the  
2           collection of bad debt through the ACA process.

3  
4           PGA costs are limited to recovery of natural gas costs necessary to  
5           bring the commodity from the production areas to the Company's city  
6           gate.

7  
8           City gate delivered costs include the cost of the commodity itself,  
9           interstate pipeline transportation charges, and interstate storage  
10          charges, all of which are subject to a later prudence review.  
11

12          However, the Commission's definition of "gas costs" as a cost that should be included in a  
13          PGA changed on September 30, 2005. On that date the Commission issued its Order  
14          Approving Stipulation and Agreement and Order Approving Tariffs in Laclede rate case  
15          No.GR-2005-0284. The Commission amended its definition of "gas costs" based on a  
16          presentation made by Staff, Laclede Gas Company, OPC and other parties in the Stipulation  
17          and Agreement Hearing in that case. In the Stipulation and Agreement hearing the parties  
18          presented to the Commission that natural gas inventory carrying costs are clear and  
19          identifiable actual gas costs that do not belong in base rates, but should be recovered  
20          through the PGA.

21          As a result of the Stipulation and Agreement hearing where all parties supported the  
22          expansion of the Commission's definition of PGA natural gas costs to include inventory  
23          carrying costs, the Commission approved the Stipulation and Agreement and amended its  
24          definition of gas costs on September 30, 2005.

25          From September 30, 2005 to April 11, 2017, a period of 11.5 years Laclede agreed that gas  
26          inventory carrying costs are true natural gas costs that belong in a PGA. In fact, all parties  
27          to all Laclede rate cases and PGA cases agreed that natural gas inventory carrying cost is  
28          a clear and identifiable natural gas cost. More than 11 years after Laclede convinced the  
29          Commission that gas inventory carrying costs are a true PGA natural gas cost, Laclede now  
30          is telling the Commission these are not true "PGA gas costs" but are really "non-PGA gas  
31          costs" that should be recovered through base rates.

1 **Q. Did anything at all change between the 2005 date when the Commission changed its**  
2 **definition of PGA natural gas costs to the 2017 date where both Staff and Laclede**  
3 **urge the Commission to revert to its previous definition of natural gas cost?**

4 A. No.

5 **Q. What is Laclede's justification for changing its position on the ratemaking treatment**  
6 **of natural gas inventory carrying costs?**

7 A. The only reason Laclede provided in testimony in this case is that MGE and other utilities  
8 do it this way. Laclede provided no substantive reason for the Commission to once again  
9 change its definition of PGA gas costs, a definition Laclede urged the Commission to adopt  
10 in 2005. Laclede witness Scott Weitzel, provided the totality of Laclede's request to the  
11 Commission to revert to its pre-2005 definition of gas costs at page 6 lines 10-18 of his  
12 rebuttal testimony.

13 The Company agrees with Staff that the Company should include  
14 storage gas inventories in rate base. MGE has historically included  
15 its natural gas inventories in rate base. Staff noted that, in addition,  
16 "all other Missouri LDCs have used the 'rate base' approach to  
17 recover carrying costs associated with gas inventory in their  
18 Missouri jurisdictions" (Staff COS Report, p. 63). That does not  
19 mean, of course, that LAC's existing treatment of this cost is  
20 inappropriate. On balance, however, we believe that this issue  
21 should be treated the same for both MGE and LAC and that MGE's  
22 approach represents the better alternative.  
23

24 **Q. Mr. Weitzel states that Laclede's new position on gas inventory carrying cost is a**  
25 **"better alternative". Did he explain why he believes this is a better alternative?**

26 A. No. He provided no testimony other than "other utilities do it" to justify a change. He also  
27 provided no explanation why including inventory carrying costs in base rates is a better  
28 alternative than including it in the PGA. This is in contrast to Laclede's 2005 presentation  
29 to the Commission that including natural gas carrying cost in the PGA was a much better  
30 alternative.

1 **Q. In Case No. GR-2005-0284 did Laclede actually provide reasons why it the best**  
2 **alternative for the ratemaking treatment of gas inventory carrying costs was to include**  
3 **the costs in the PGA?**

4 A. Yes. On September 26, 2005, in Case No. GR-2005-0284 Stipulation & Agreement  
5 Hearing, Laclede counsel Mr. Michael Pendergast, in response to questions from the  
6 Commissioner Steve Gaw, stated that natural gas inventory carrying costs are “about as  
7 intricately related to gas costs as they're already recovered through the PGA, as just about  
8 anything else could be.” (Tr Vol 7. Page 107 line 3, Schedule CRH-S-5) Laclede’s position  
9 in 2005 was that inventory carrying costs are true gas costs and belong in the PGA. The  
10 Commission agreed.

11 **Q. Did Laclede provide additional support for including gas inventory carrying costs in**  
12 **the PGA as a better alternative than including it in base rates?**

13 A. Yes. Mr. Pendergast explained to Commissioner Gaw that Laclede wants to recover the  
14 inventory carrying costs through the PGA mechanism so that Laclede will “know what  
15 those costs are.” Mr. Pendergast explained that including the carrying cost of gas inventory  
16 in the PGA is a better alternative because “[y]ou will not be charging more or less than  
17 what they are. . . .” The PGA charge is updated much more frequently than a change in  
18 base rates.

19 As becomes clear from the discussion between Commissioner Gaw and Mr. Pendergast  
20 believes because of the frequency of the PGA cost recovery, Laclede will recover from  
21 ratepayers in the PGA, and ratepayers will pay Laclede through the PGA, rates that reflect  
22 a more accurate level of Laclede’s costs to maintain gas inventories. Laclede asserts, and I  
23 agree, that including the carrying cost in a much more frequently updated cost recovery  
24 mechanism significantly reduces the regulatory lag associated with the recovery of this  
25 cost. Laclede’s implied assertion to the contrary in this rate case is puzzling.

26 COMMISSIONER GAW: So the net impact on all rates, including  
27 the PGA, if the PGA were to remain the same, except for the 4.1  
28 million is the 8.5.

1 MR. MEYER: Yes.

2 COMMISSIONER GAW: Is that correct?

3 MR. PENDERGAST: Yes.

4 COMMISSIONER GAW: And again, what is in that 4.1 million?

5 Whoever is easiest to come up with an answer the quickest.

6 MR. PENDERGAST: Those are inventory costs associated with the  
7 natural gas that we have in storage, basically carrying costs as well as  
8 our propane storage supplies.

9 COMMISSIONER GAW: And how's that been handled in the past?

10 MR. PENDERGAST: Well, it depends on how far you want to go  
11 back.

12 COMMISSIONER GAW: I see.

13 MR. PENDERGAST: In the past, when we bought all of our gas  
14 supplies from interstate pipelines, most, if not all of it, at least the part  
15 that's associated with pipeline storage, was bundled up and included  
16 in whatever the sales rate was that the interstate pipeline charged the  
17 utility. After 636 and transportation came, those costs were included  
18 for a while up until this point in base rates, and what this would do is  
19 have those costs recovered as they used to be, or at least a significant  
20 portion of them were, through the PGA mechanism in the future. And  
21 once again, one of the reasons for doing that, from our perspective, is  
22 that you will go ahead and know what those costs are. You will not be  
23 charging more or less than what they are, and they're about as  
24 intricately related to gas costs as they're already recovered through the  
25 PGA, as just about anything else could be

26 COMMISSIONER GAW: Okay. And so that 4.1 million in the PGA  
27 would be something that will float according to whatever the costs  
28 are, correct?

29 MR. PENDERGAST: Yes.

30 COMMISSIONER GAW: If it were in the base rates themselves, then  
31 that locks in from rate case to rate case?

32 MR. PENDERGAST: That's correct.

33  
34 *(Transcript of Proceeding, GR-2005-0284, In the Matter of Laclede*  
35 *Gas Company's Tariff to Revise Natural Gas Rate Schedules*  
36 *Stipulation & Agreement Hearing September 26, 2005, Jefferson City,*  
37 *Missouri Volume 7, page 107-108.)*  
38  
39

40 **Q. Is it your understanding that one of the main purposes of single-issue ratemaking**  
41 **mechanisms such as the PGA is to reduce the impact of regulatory lag?**

1 A. Yes, it is. However, as it related to this issue, both Staff and Laclede are proposing an  
2 approach that is inconsistent with the purpose of the PGA mechanism and are proposing to  
3 intentionally increase the impact of regulatory lag on the changes in gas inventory carrying  
4 costs. Increasing regulatory lag as proposed by Laclede and Staff on this issue is counter  
5 to the Commission's strong desire over the past several years to reduce the impact of  
6 regulatory lag.

7 **Q. How did Staff witness Dave Sommerer summarize his position on this issue in his**  
8 **rebuttal testimony?**

9 A. At page 5 line 20 of his rebuttal testimony Mr. Sommerer stated:

10 The preferred ratemaking treatment for gas inventory carrying costs in  
11 these proceedings should be to include them in rate base. The  
12 expansion of costs recoverable under the PGA can open that  
13 mechanism to further complexity and proposals to extend an  
14 automatic adjustment clause that was never intended to do more than  
15 recover the actual cost of gas.  
16

17 **Q. When did this "expansion" of costs recoverable under the PGA take place?**

18 A. It took place 11.5 years ago in 2005.

19 **Q. Did Mr. Sommerer's employer, the Commission Staff, encourage this "expansion" of**  
20 **cost recoverable in the PGA for Laclede in 2005?**

21 A. Yes.

22 **Q. How does Mr. Sommerer define a "carrying cost"?**

23 A. He defines a carrying cost at page 2 line 9 of his rebuttal testimony:

24 A carrying cost represents an amount of funds that Spire Missouri,  
25 or any natural gas company for that matter, must use in order to  
26 acquire gas to inject in the summer, prior to the time it recovers  
27 revenues for those injected volumes.  
28

1 **Q. Do you agree with this definition?**

2 A. No. Mr. Sommerer is confusing the cost of buying the commodity natural gas that is placed  
3 in inventory with the financing charge (interest expense) on the funds that are borrowed to  
4 purchase the commodity.

5 **Q. In 2008 did Mr. Sommerer have a different definition of a carrying cost?**

6 A. Yes. In his direct testimony in Case No. GR-2008-0060 at page 4 line 22 he defined  
7 carrying cost as the “calculated interest cost for the natural gas storage balance.”

8 The recovery of storage carrying costs being requested by MGU is  
9 not the cost paid to suppliers for the storage of gas. It is MGU’s  
10 calculated interest cost for the natural gas storage balance.  
11

12 **Q. Is this definition of a natural gas inventory carrying cost Mr. Sommerer provided to the**  
13 **Commission in 2008 a correct definition?**

14 A. Yes, it is.

15 **Q. Mr. Sommerer states that the inclusion of inventory “carrying costs” in the Laclede’s**  
16 **PGA surcharge pursuant to a 2005 Stipulation and Agreement in Case No. GR-2005-**  
17 **0284 does not establish them to be “gas costs”. Is that a reasonable statement?**

18 A. No. It is a completely unreasonable statement. As noted above, on September 26, 2005, as  
19 reflected in the Transcript of Proceedings in the Case No. GR-2005-0284 Stipulation &  
20 Agreement Hearing, Laclede counsel Mr. Michael Pendergast, in response to questions  
21 from the Commissioner Steve Gaw, stated that natural gas inventory carrying costs are  
22 “about as intricately related to gas costs as they're already recovered through the PGA, as  
23 just about anything else could be.” Staff did not express any disagreement with this  
24 assertion by Laclede. It is a little late for Mr. Sommerer to advise the Commission that  
25 carrying costs on not PGA gas costs 11.5 years after the Commission has treated them as  
26 gas costs based on recommendations from both Laclede and Staff.

1 Q. In 2005 the Commission agreed with Staff and Laclede that inventory carrying costs are  
2 a gas cost that should be included in the PGA. In its 2003 Report and Order in Laclede  
3 Case No. GT-2003-0117 did the Commission state that it “will not” include non-gas costs  
4 in the PGA?

5 A. Yes. The Commission expressly does not include non-gas costs in a PGA. To assert that the  
6 Commission does, as Mr. Sommerer is doing in his rebuttal testimony, is simply wrong.

7 At page 14 of its January 16, 2003 Report and Order in Case No. GT-2003-0117 the  
8 Commission stated that it will not include non-gas costs in the PGA for a number of reasons.  
9 The Commission listed the primary reason being that the PGA/ACA process has been  
10 determined to be lawful because it is limited to a specific type of cost – the cost of gas.

11 If the Commission did not reach the conclusion that its inventory carrying costs are a PGA gas  
12 cost, according to the Commission’s reasoning in its Report and Order in GT-2003-0117, the  
13 Commission would be potentially taking an action that would make the PGA/ACA process  
14 unlawful:

15 The Commission has determined that it may not include non-gas costs  
16 in the ACA/PGA process for a number of reasons. *State ex rel.*  
17 *Midwest Gas Users' Ass'n v. Public Serv. Com'n.*, 976 S.W.2d 470  
18 (Mo.App. W.D. 1998).

19  
20 The PGA/ACA process has been determined to be lawful because it is  
21 limited to a specific type of cost – the cost of gas. The Court has said  
22 that in determining to allow a PGA mechanism, the Commission is  
23 necessarily determining that “due to the unique nature of gas fuel  
24 costs, including the fact that natural gas is a natural resource, not a  
25 product which must be produced with labor or materials, the fuel cost  
26 component of the rate may be treated differently. *Id.* at 480.

27 In approving the PGA the Commission created a mechanism that  
28 allows fuel costs to be passed along and fuel cost reductions to be  
29 passed along in the amount incurred. *Id.*

1 **Q.** Laclede's sole reason for proposing a change in the ratemaking treatment of gas  
2 inventory carrying costs is that it wants to be consistent with MGE. Is OPC  
3 recommending that the Commission treat MGE's inventory carrying costs in the same  
4 manner as the Commission currently treats Laclede's carrying costs, which is through  
5 the PGA?

6 **A.** Yes. All the benefits of including gas inventory carrying costs in the PGA that Laclede  
7 explained to the Commission in 2005 are equally applicable to MGE today. By contrast, all  
8 the detriments of not including inventory carrying costs in the PGA are also as applicable to  
9 MGE as they are to Laclede. OPC requests the Commission continue the current PGA  
10 treatment of Laclede's inventory carrying costs and order MGE to recover its inventory  
11 carrying costs through its PGA and not in base rates.

12 **Q.** What is the rate increase on customers in this rate case if the Commission allows Laclede  
13 to revert to its pre-2005 ratemaking treatment of gas inventory carrying charge?

14 **A.** As reflected in my analysis below, just to be "consistent" with MGE, Laclede is asking its  
15 customers to pay \$8 million more in gas inventory carrying costs every year. This increase is  
16 caused by the fact that, while Laclede finances its gas inventories with short term debt at a  
17 1.38% cost rate, it proposes to charge its customers for higher capital costs that it does not  
18 incur. Laclede's proposal will result in a windfall to shareholders and is the real reason, not  
19 consistency with MGE, that it is seeking this change.

	Laclede	MGE
Gas Inventory	\$82,577,720	\$37,309,065
G/U WACC (Laclede True Up)	11.0%	11.0%
Return on Gas Inveentory including profit and taxes	\$9,077,769	\$4,101,385
Staff's Short-term Debt Rate	1.380%	1.380%
Return on Gas Inventory with short-term debt rate	\$1,139,573	\$514,865
Laclede's Proposed Increase	\$7,938,196	\$3,586,520



1 **Q. What is the rate increase on MGE customers by MGE including natural gas inventory**  
2 **carrying costs in its rate base in this case as opposed to in its PGA charge?**

3 A. By including PGA gas costs in base rates, contrary to Commission policy on gas costs, and  
4 contrary to Commission policy on mitigating regulatory lag, MGE customers will pay \$3.6  
5 million annually for this inappropriate and erroneous rate treatment of this gas cost.

6 **Q. Staff proposes to reflect an amount of short-term debt in MGE's and Laclede's capital**  
7 **structure. If the Commission agrees will this remove the clear and significant ratepayer**  
8 **detriment from allowing Laclede's proposed total tax grossed-up weighted average costs**  
9 **of capital ("WACC") rate of 11% to be applied to the gas inventory balance?**

10 A. Yes. While Staff's position on the appropriate recovery method of gas inventory carrying  
11 costs (base rates as opposed to PGA) is wrong, it is better than Laclede's proposal. Staff's  
12 proposal is not consistent with current practice, eliminates the benefits of the PGA method  
13 both Staff and Laclede advised the Commission in 2005, increases as opposed to mitigates  
14 regulatory lag, and negates the Commission's stated purpose of the PGA (separate gas costs  
15 from non-gas costs under a faster recovery method). However, by assigning an amount of  
16 short-term debt in an amount at least equal to the inventory balance included in rate base, the  
17 Staff's method should not result in a financial harm to ratepayers.

18 **Q. Does Laclede and MGE propose to include any short-term debt in its capital structure?**

19 A. No. If Laclede proposed short-term debt in its capital structure it would possibly mitigate the  
20 windfall profits its shareholders will receive by charging customers a much higher carrying  
21 cost on gas inventories than it actually pays to its debtholders. Such an action would not be in  
22 Laclede's nature.

23 **Q. Why do you say Laclede's shareholders will receive windfall profits if the Commission**  
24 **accepts Laclede's proposal?**

25 A. Laclede currently finances its gas inventories at a short-term debt cost rate of approximately  
26 1.38%. Under the PGA, this is the amount that its customers are charged. If the Commission

1 approves Laclede's request to take the carrying cost out of the PGA and into base rates,  
2 Laclede's customers will be charged a carrying cost of 11% on each dollar of gas inventory.  
3 Assuming that Laclede continues to finance its gas inventory using its short-term debt at  
4 1.38%, as it would be prudent to do, its shareholders will receive a windfall profit on gas  
5 inventory of 9.6% without making any investment in the natural gas inventory included in  
6 rate base.

7 **Accumulated Deferred Income Taxes**

8 **Q. Please summarize this issue.**

9 A. In its response to OPC Data Request 1001 ("DR 1001") Laclede reported on its balance sheet  
10 an accumulated deferred income taxes ("ADIT or "deferred income taxes") balance of \$457.9  
11 million for Laclede and \$89.3 million for MGE. However, in its direct filing Laclede only  
12 reported an ADIT balance of \$206.9 million for Laclede and \$28.5 million for MGE.

13 On September 15, 2017, OPC issued Data Request 1081 ("DR 1081") related to Laclede's  
14 deferred income taxes. DR 1081, attached as Schedule CRH-S-6, asked Laclede to reconcile,  
15 or explain the substantial differences between the two amounts. In his response to DR 1081,  
16 Laclede witness Mr. Glenn Buck responded that, "[t]he ADIT reported to the SEC at  
17 September 30, 2016 is irrelevant for purposes of what LAC is reporting to the Commission at  
18 December 31, 2016. The SEC reporting includes items that are not part of rate base."

19 **Q. Are the deferred income tax amounts reported to the Securities and Exchange**  
20 **Commission ("SEC") in Laclede's annual report directly relevant to what Laclede**  
21 **reports to the Commission?**

22 A. Yes. Deferred income taxes are the tax effect of timing differences between the recognition  
23 of revenues, expenses, gains and losses for accounting ("book") purposes and for income tax  
24 purposes.

25 Deferred income taxes normally represent a prepayment of income taxes by ratepayers and,  
26 therefore, these deferred taxes are included in rate base as a credit or rate base offset. Deferred

1 income taxes reflect the ratepayer prepayment of income taxes, which the utility will not  
2 actually have to pay until sometime in the future. Several state regulatory commissions  
3 reflected this ratepayer prepayment by including deferred income taxes in the utility's rate  
4 case capital structure with a zero cost for this ratepayer supplied capital.

5 The deferred tax balance reflected on an audited document, such as Laclede's annual report  
6 filed with the SEC (Form 10-K), has a much higher degree of reliability than a deferred  
7 income tax balance selectively calculated by utility management for rate case purposes. This  
8 is the reason why it is very important for an auditor to be able to reconcile the differences  
9 between the audited and verified deferred tax amount reported by utility management to the  
10 SEC with the amount utility management represents to the Commission in a rate case.

11 **Q. Is it likely that the deferred income tax amounts reported on the SEC Form 10-K by**  
12 **utility management will be different from the amounts that should be reflected in rate**  
13 **base for ratemaking purposes?**

14 **A.** Yes. The deferred tax balance reported on the utility's SEC Form 10-K must comply with  
15 generally accepted accounting principles ("GAAP"). Not all of the GAAP deferred income  
16 taxes are appropriately included in rate base. For example, the tax effect of deferred income  
17 tax timing differences for revenues, expenses, gains and losses, which are not reflected in a  
18 utility's cost of service (rate base or income statement), will be included in the SEC Form 10-  
19 K but, in most cases, have a general presumption of being excluded from rate base. This is  
20 the type of analysis that a rate case auditor must perform in order to propose a reasonable,  
21 accurate and verifiable level of deferred income taxes to be included in a utility's cost of  
22 service.

23 **Q. Did Laclede's refusal to provide a reconciliation between what Laclede is reporting to**  
24 **the Commission and what it is reporting to the SEC, affect your ability to calculate a**  
25 **reasonable, accurate and verifiable level of deferred income taxes to be included in the**  
26 **Companies' cost of service in these rate cases?**

1 A. No. Laclede's refusal to provide required audit data meant that I am not able to reconcile the  
2 difference between what Laclede proposes, unaudited data that is Laclede's opinion of the  
3 correct amount of deferred taxes, and the amount of deferred taxes that has been audited by  
4 Laclede's outside auditors and provided to the SEC. Given the option between relying on  
5 audited and verified accounting information and information that has been developed by  
6 utility management in an effort to increase utility rates, an auditor will always chose the  
7 audited and verified amount.

8 **Q. Given these circumstances, what level of deferred income taxes is OPC proposing to be**  
9 **reflected in MGE and Laclede's rate base in this rate case?**

10 A. Laclede issued its 2017 SEC Form 10-K Annual Report on November 15, 2017 ("2017 10-  
11 K"). Laclede reports its operation on a fiscal year as opposed to a calendar year, so its 2017  
12 10-K financial statements reflect the results of operations for the twelve months ended  
13 September 30, 2017 and the asset, liability and equity balances at September 30, 2017.

14 The total deferred income taxes reported in the 2017 10-K for MGE and Laclede at September  
15 30, 2017 are \$623.8 million. Allocating this amount by the ratio of deferred income taxes  
16 reflected individually for Laclede (84%) and MGE (16%) in Laclede's response to OPC DR  
17 1001 results in a rate base amount for Laclede of \$522 million and for MGE \$101.8 million.  
18 These are the amounts proposed by OPC to be include in Laclede and MGE's respective rate  
19 bases in this case.

20 **Q. What are the rate base deferred income tax balances proposed by Laclede and MGE at**  
21 **September 30, 2017?**

22 A. Laclede and MGE's September 30, 2017 workpapers reflect a deferred income tax balance of  
23 \$201.2 million for Laclede and \$35.8 million for MGE. These amounts are reflected on  
24 Laclede and MGE workpaper "Deferred Tax Balance @ September 30, 2017 For Rate Base"  
25 provided as part of Laclede and MGE's true-up workpapers.

1 **Cost Allocation Manual Update and Affiliate Transaction Audit**

2 **Q. In its Report and Order issued in these rate cases is OPC requesting the Commission**  
3 **order Laclede updated its Cost Allocation Manual (“CAM”) and file for Commission**  
4 **approval of its updated CAM?**

5 A. Yes. In my direct testimony I listed several reasons why it is essential that Laclede updated  
6 its CAM. OPC is requesting that the Commission order Laclede to update its CAM for all its  
7 acquisitions since September 2013 and file for approval of an updated CAM no later than six  
8 months after the Commission issues its report and order in this rate case. The Commission  
9 should also order Laclede to review recent Commission approved CAMs for KCPL and GMO  
10 and incorporate the general CAM components and internal controls that are included in those  
11 Commission-approved CAMs.

12 The Affiliate Transactions Rule requires Laclede to use a Commission-approved CAM as a  
13 basis for its transactions with affiliates and nonregulated operations. The requirements for a  
14 Commission-approved CAM can be found in 4 CSR 240-40.015 paragraphs 2(E) and 3(D).

15 **Q. Was Laclede affiliate LIRS and substantially all of Laclede’s affiliates created or**  
16 **acquired after Laclede’s CAM was approved in Case No. GC-2011-0098?**

17 A. Yes. The Commission approved current Laclede’s CAM on August 14, 2013 as a result of a  
18 stipulation and agreement to resolve a Laclede complaint case, Case No. GC-2011-0098 (See  
19 Laclede CAM Schedule CRH-D-3 attached to my direct testimony). In that case, OPC,  
20 Laclede, and Staff filed a *Unanimous Partial Stipulation and Agreement and Waiver Request*  
21 *and Request for Approval of Cost Allocation Manual* that, among other things, resolved  
22 certain affiliate transaction issues raised in the Staff complaint.

23 **Q. Since you filed direct testimony in these rate cases have you found additional reasons**  
24 **why it is critical for the Commission to order Laclede to update its CAM?**

25 A. Yes. During this case I first learned that Spire created another affiliate named LIRS, or  
26 Laclede Insurance Risk Services. LIRS is owned by Spire, Inc. and it is my understanding

1 that the Laclede Gas Company utility purchases insurance services from LIRS through Spire.  
2 The Staff has filed testimony in this case that the transactions with LIRS are affiliate  
3 transactions and I fully agree with this Staff conclusion. Because LIRS is an affiliate of  
4 Laclede and MGE, any purchase of insurance or re-insurance from LIRS (either directly or  
5 indirectly) by Laclede or MGE must be done at the lower of cost of market.

6 **Q. Does Laclede Gas admit that risk management services are provided by Laclede**  
7 **Insurance Risk Services, Inc. to Laclede Gas?**

8 A. Yes. The following statement was made by Laclede in its 2016 SEC Form 10-K, Annual  
9 Report at paragraph 14 *Information By Operating Segment*, page 126:

10 Intersegment transactions include sales of natural gas from LER to  
11 Laclede Gas, sales of natural gas from Laclede Gas to LER, risk  
12 management services provided by Laclede Insurance Risk Services,  
13 Inc. to Laclede Gas, propane transportation services provided by  
14 Laclede Pipeline Company to Laclede Gas, and propane storage  
15 services provided by Laclede Gas to Laclede Pipeline Company.  
16

17 **Q. Despite this assertion to the SEC that LIRS provides affiliate services to Laclede Gas**  
18 **does Laclede witness Glenn Buck deny that LIRS provides affiliate services to Laclede?**

19 A. Yes. At page 23 line 11 of his rebuttal testimony Mr. Buck states “LIRS does not transact  
20 business with either LAC or MGE. Mr. Buck makes this statement even tough Laclede admits  
21 in its SEC Annual Report that LIRS provides risk management services to Laclede Gas.  
22 Based on this statement, it is clear that Laclede’s own expert witnesses are not trained on the  
23 Commission’s affiliate transaction rule or even understand the definition of an affiliate  
24 transaction.

25 **Q. In addition to requiring Laclede to file a new CAM within six months of the closing of**  
26 **this rate case, is OPC also requesting the Commission order an audit of Laclede’s**  
27 **affiliate transactions and cost allocations as described in the testimonies of OPC witness**  
28 **Ara Azad?**

1 A. Yes. There is a very strong need for such an audit, and an audit of Laclede's affiliate  
2 transactions is long overdue. Further evidence of the need for such an audit is provided by  
3 OPC witness Ara Azad in her filed testimonies in these rate cases.

4 **Q. Has the Staff had a long history of concern about Laclede's lack of compliance with**  
5 **the Commission's affiliate transaction rules?**

6 A. Yes. As a member of Staff's Auditing Department from 1993 to 2015 I became aware of  
7 the Staff's serious concerns with Laclede's affiliate transactions over a period of several  
8 years. The Staff had particular concerns with Laclede's lack of compliance with the  
9 affiliate transaction rule. The Staff also had serious concerns with Laclede's failure to  
10 adhere to its transparency commitments made to the Commission related to its transactions  
11 with Laclede's affiliates, including LER (Laclede Energy Resources).

12 For example, in Staff's Revenue Requirement Cost of Service Report in Laclede's 2010  
13 general rate case, No. GR-2010-0171, the Staff stated at page 53, "The Staff has serious  
14 concerns that the Company's policies, procedures and methods for its allocation of costs  
15 to its various affiliates is inadequate to prevent Laclede Gas' customers from paying  
16 expenses that are related to affiliates."

17 **Q. Did the Staff file an affiliate transaction complaint case against Laclede in 2011?**

18 A. Yes. I was the Staff expert witness in the Affiliate Transactions Staff Complaint (Case No.  
19 GC-2011-0098) against Laclede.

20 **Q. On September 1, 2016 the Staff filed its Staff Investigation Report ("Staff Report")**  
21 **in Case No. GM-2016-0342. In this Report the Staff expressed serious concerns with,**  
22 **among other things, Laclede's degradation in customer service and improper cost**  
23 **allocations. Are you aware of this Staff Report?**

24 A. Yes. This Report is attached as Schedule CRH-S-7. Soon after the Staff filed this Report,  
25 the findings of the Report were released in at least two press reports in the St. Louis  
26 Business Journal. On September 1, 2016 the St. Louis Post Dispatch published an article

1 entitled "Regulators: Laclede Gas customers pay extra for parent company Spire's out-of-  
2 state acquisitions." An excerpt from this article is shown below:

3 Rates have gone up and service has decreased for Laclede Gas  
4 customers following its parent company's purchase of a large  
5 Alabama natural gas utility, an investigation from Missouri  
6 regulators has found.

7  
8 The stinging, 77-page report from the staff of the Missouri Public  
9 Service Commission found that Laclede Gas' holding company  
10 improperly allocated costs to the natural gas utility in connection  
11 with the purchase of Alagasco.

12 The holding company, St. Louis-based Spire, which recently  
13 changed its name from the Laclede Group, also used services from  
14 Laclede Gas to run the Alabama utility and the parent company,  
15 the report found, thereby driving up rates for St. Louis area  
16 customers.  
17

18 On September 2, 2016 the St. Louis Business Journal published an article entitled "Public  
19 Service Commission staff report says Spire increased rates to pay for acquisitions." An  
20 excerpt from this article is shown below:

21 "As noted elsewhere in this report, it appears that services have  
22 been provided by Laclede Gas Company to Spire and Alagasco in  
23 connection with this acquisition and that costs have been allocated  
24 to Laclede Gas Company in connection with this acquisition, all in  
25 violation of Commission Rule 4 CSR 240-40.015, pertaining to  
26 affiliate transactions."  
27

28 **Q. Are you aware of any actions taken by the Commission to address the issues raised**  
29 **by the Staff in its September 1, 2016 Staff Report?**

30 **A. No.**

31 **Q. Do you believe the Commission should, at a minimum, order a cost allocation and**  
32 **affiliate transaction audit of Laclede and its affiliates to address the concerns raised**  
33 **by the Staff in its Staff Report in Case No. GM-2016-0342?**



1 A. Yes. In an agenda session on January 18, 2017 Chairman Hall made the statement that  
2 since he became Chairman, in every working docket in which a report was filed, he has  
3 closed the case and used that filed report in the next case. The Staff Report expressing  
4 serious concerns with Laclede was filed in Case No. GM-2016-0342 on September 1, 2016.  
5 OPC supports the Commission's commitment to use the filed working docket reports in  
6 the next case, and believes the Commission should to address the specific concerns raised  
7 by the Staff in its Report in GM-2016-0342.

8 **SERP Capitalization**

9 **Q. What is Staff's justification of its position to capitalize SERP costs?**

10 A. Staff witness Matt Young states at page 2 line 18 of his rebuttal testimony that the Staff  
11 capitalized SERP costs only because Laclede has a policy to do so.

12 Staff recognizes that LAC and MGE currently have a policy for the  
13 capitalization of certain SERP costs; therefore setting rates by  
14 assigning a portion of normalized SERP costs to capital is consistent  
15 with LAC's and MGE's actual accounting practices. OPC's removal  
16 of capitalized SERP costs during the test year does not reflect ongoing  
17 SERP capitalization policies and is also an incomplete adjustment.

18  
19 **Q. Should Staff audit and conclusions be influenced in any manner by utility accounting  
20 policies?**

21 A. No, not at all. An auditor is trained to look at each and every utility policy and cost with  
22 professional skepticism, not acquiescence, as Staff is doing on this SERP issue in this rate  
23 case. Staff's lack of professional skepticism and acquiescence to Laclede's SERP accounting  
24 policy prevented it from analyzing this issue from an objective auditing perspective.

25 **Q. Did Staff propose any theoretical basis or justification for why it would capitalize to  
26 plant in service costs that provided no benefit to ratepayers in the test year or in years  
27 beyond past the test year?**

28 A. No.

1 **Q. Is there any theoretical basis or justification why it would be appropriate and reasonable**  
2 **to capitalize to plant in service costs that provided no benefit to ratepayers in the test**  
3 **year or in years past the test year?**

4 A. No. The matching principle, which is a bedrock principle of accounting and ratemaking, also  
5 requires costs, which provide benefits to future periods, be recognized and matched with the  
6 revenues of those future periods.

7 Costs that do not provide benefits to future periods are referred to as “period costs” and costs  
8 that provide benefits to future periods are called capital costs. All or a part of capital costs are  
9 charged to construction projects (FERC Account 107 Construction Work in Progress) and  
10 eventually are reflected in plant accounts where the plant costs are amortized over the periods  
11 when the plant is used to provide benefits to customers.

12 Conversely, costs that do not provide benefits to future periods (such as SERP payments paid  
13 to retirees for past utility service) are referred to as “period expenses” and are expensed in the  
14 current period.

15 **Q. Is capitalization allowed under generally accepted accounting principles (“GAAP”) or**  
16 **the FERC’s USOA for costs that do not provide future benefits?**

17 A. No. That is why Staff’s position on this issue not only lacks any theoretical basis, it is directly  
18 contradictory to GAAP and the accounting system under which Laclede and MGE must  
19 operate – the FERC USOA. The FERC ruled that the capitalization of costs that do not provide  
20 any measurable benefits for future accounting periods “is improper” (See FERC *Order on*  
21 *Accounting for Pipeline Assessment Costs*, page 8, paragraph 25, Docket No. AI05-1-000  
22 attached as Schedule CRH-S-1).

23 **Q. What is the difference between a period cost (a cost charged to expense in the period**  
24 **incurred) and a capital cost (a cost capitalized or deferred and amortized, or reflected**  
25 **in expense, in future periods)?**

1 A. The difference is that the incurrence of period costs (expenses) do not provide any measurable  
2 benefits for customer's in future utility accounting periods. As such, capitalization of period  
3 costs is improper.

4 **Q. In his rebuttal testimony Mr. Young seems to indicate that OPC's position that SERP**  
5 **expenses should not be capitalized is only based on GAAP and GAAP's explicit**  
6 **recognition that pension expense of any kind, other than for benefits earning in the**  
7 **current year, should not be capitalized. Is that correct?**

8 A. No. In fact, Staff in prior years, used to have a policy that no SERP expenses should be  
9 capitalized. This Staff policy was even adopted by Kansas City Power & Light Company. In  
10 her December 2010 rebuttal testimony in Case No. ER-2010-0356 (Schedule CRH-S-8), Ms.  
11 Ellen Fairchild, KCPL's then Vice President, Corporate Secretary and Chief Compliance  
12 Officer stated at page 3 line 8:

13 While I do have a number of areas of disagreement, I do agree with  
14 Mr. Hyneman's rational for not allocating any SERP expense to  
15 capital; the reduction of monthly annuities by 20 percent to reflect that  
16 some SERP expense was based on bonus payments and incentive  
17 compensation which were not included in cost of service; and the  
18 exclusion of SERP for former L&P executives and certain former  
19 Aquila executives. (Emphasis added).  
20

21 For an unexplained reason Staff changed this position to now supporting SERP expense  
22 capitalization solely on the basis of utility policy. If Staff wants to recommend this ratemaking  
23 approach it should be required, at a minimum, to state a reasonable basis for the position other  
24 than "that's how the utility does it". Staff does not and I believe cannot provide any  
25 substantive or theoretical accounting or ratemaking support for capitalization of SERP  
26 expenses. In these rate cases, neither Staff nor Laclede provided any support for SERP  
27 capitalization.

28 **Q. In addition to specific GAAP requirements that SERP not be capitalized, what is OPC's**  
29 **other basis for advising the Commission that SERP should not be capitalized?**

1 A. Basic accounting principles only allow costs that specifically benefit future periods to be  
2 capitalized (deferred) and depreciated (amortized) over the future benefit period. This is  
3 referred to as the matching principle of accounting. Staff's position is counter to this basic  
4 accounting principle.

5 Secondly, as noted above, the FERC USOA only allows cost that provide future benefit to be  
6 capitalized. Staff does not explain how payments to SERP recipients for service provided  
7 years in the past, benefits current ratepayers. Finally, the Financial Accounting Standards  
8 Board ("FASB") specifically prohibits any pension cost other than the compensation cost of  
9 pension benefits earned by current employees, to be capitalized and charged to future periods.

10 **SERP Expense**

11 **Q. At page 16 of his rebuttal testimony Staff witness Young states: "[I]f OPC wishes to**  
12 **annualize ongoing SERP annuity payments, it should convert lump-sum payments into**  
13 **comparable annuity payments so that LAC's and MGE's historical SERP costs are**  
14 **appropriately represented in OPC's animalization." Please comment.**

15 A. OPC cannot agree to "annualize" lump sum payments. In this case, OPC's position is the  
16 same position that Staff has taken in past rate cases: that lump sum payments are erratic,  
17 nonrecurring and difficult to predict. That long standing Staff position, and the OPC position  
18 in this case, is that utility lump-sum payments are not only inappropriate to "normalize" in a  
19 rate case setting, but cannot at all be reasonably normalized in a utility's cost of service.

20 **Q. As recently as November 20, 2016, did Staff admit that lump sum SERP payments are**  
21 **"difficult to predict"?**

22 A. Yes. Less than one year ago, at page 99 of its Revenue Requirement Cost of Service Report  
23 in Case No. ER-2016-0285, *In the Matter of Kansas City Power & Light Company's Request*  
24 *for Authority to Implement A General Rate Increase for Electric Service*, Staff witness Keith  
25 Majors testified to the fact that lump sum SERP payments are "difficult to predict." Staff  
26 witness Majors also testified to this very fact in KCPL's 2014 rate case, No. ER-2014-0370,

1        *In the Matter of Kansas City Power & Light Company's Request for Authority to Implement*  
2        *a General Rate Increase for Electric Service, as well (See Schedule CRH-S-9 for Staff SERP*  
3        *direct testimony positions in Case Nos. ER-2012-0174, ER-2014-0370 and ER-2016-0285).*

4                SERP payments can consist of either monthly annuity payments or  
5                periodic lump-sum distributions. Lump-sum payments can be  
6                significant and the timing of these payments are often difficult to  
7                predict. As opposed to including a normalized amount of actual lump-  
8                sum payments, KCPL used a conversion factor of 14.3 to convert prior  
9                lump-sum payments to an amount that approximates the equivalent  
10                annuity payments to the qualifying employees as if that lump-sum  
11                payment option were not elected. Staff utilized this factor for the  
12                calculation of a normalized level of converted lump-sum payments.  
13                (Emphasis added) (Staff Cost of Service Report ER-2016-0285, page  
14                99)

15    **Q. Can an expense that is “difficult to predict” be recognized as a “known and measurable”**  
16    **expense?**

17    A. No. An expense that is “difficult to predict” is by definition not known and measurable. The  
18    known and measurable ratemaking standard is a basic standard of ratemaking that most  
19    regulatory commissions, including this commission, has applied and enforced for many years.  
20    Staff, in its proposal for SERP in this rate case, is asking the Commission to ignore the known  
21    and measurable ratemaking standard for Laclede’s SERP expense.

22    **Q. What is the known and measurable standard?**

23    A. The Staff defined this standard in Case No. ER-2001-299. This is the standard that the Staff  
24    and the Commission have used for many years:

25                Q. What does the term "known and measurable" mean?

26                A. A "known and measurable" expense is an expense that is 1)  
27                "known," meaning that the amount did or definitely will be an actually  
28                incurred cost and 2) "measurable," meaning that the rate impact of the  
29                change (for example, property tax expense) can be calculated with a  
30                high degree of accuracy. The significance of this term is that  
31                historically the Commission has only reflected in rates those revenue  
32                requirement changes that were known and measurable at the time the

1 rate decision was made. (Boltz Direct page (True-Up Surrebuttal  
2 Testimony Roy M. Boltz, Jr page 6, ER-2001-299)

3 **Q. Has the Commission defined and described its known and measurable standard?**

4 **A. Yes. In Case No. WR-2000-844, St. Louis County Water Company, the Commission ruled:**

5 The Commission traditionally, and properly, allows recovery of cost  
6 increases that are projected to occur after the end of the test year  
7 (including any adjustment periods) only if those costs are known and  
8 measurable. A cost increase is "known" if it is certain to occur, and it  
9 is "measurable" if the Commission is able to determine the amount of  
10 the increase with reasonable precision. The Company's projected  
11 property tax increases are neither known nor measurable. ...Because  
12 any increase in the Company's property tax expense is not known and  
13 measurable, the Commission will not adopt the Company's proposal.

14  
15 **Q. You state that Staff previously had a policy of not including lump sum SERP payments  
16 in cost of service. Is that correct?**

17 **A. Yes. That was the Staff's position in KCPL's 2012 rate case No. ER-2012-0174. See  
18 Schedule CRH-S-9 attached to this testimony for a description of Staff's SERP position in  
19 that rate case.**

20 **Q. Did Staff's first change to a new SERP ratemaking policy reflecting SERP lump sum  
21 payments in cost of service on an "annuitized" basis, as requested by the utility in 2014?**

22 **A. Yes, it did. See Schedule CRH-S-9 attached to this testimony for a description of Staff's  
23 SERP position in Case No. ER-2014-0370 as sponsored by Staff witness Majors. Staff  
24 continued this position as late as 2016 as reflected in Staff's direct testimony in KCPL rate  
25 case ER-2016-0285.**

26 **Q. Is Staff once again changing its position on SERP expense and reflecting lump sum  
27 payments in cost of service without annuitization and lumping these large dollar  
28 payments along with other smaller dollar annuity payments?**

1 A. Yes. Staff's current approach, as sponsored by Mr. Young in this rate case, reflects yet another  
 2 change in Staff's method of calculating SERP expense for ratemaking purposes. While  
 3 Staff's previous changes in ratemaking methodology for SERP could be considered  
 4 reasonable, this most recent Staff change in methodology is completely unreasonable. This  
 5 new position indicates a Staff desire to follow a utility policy or recommendation of adding  
 6 in lump sum payments with annuity payments, something the Staff as refused to do in the  
 7 past.

8 **Q. Does the Staff's new change make any sense to you from a ratemaking policy or**  
 9 **principle standpoint?**

10 A. No. The Staff abandoned its policy that lump sum SERP payments were erratic, irregular and  
 11 not known and measurable by adopting the SERP proposal made by KCPL in its 2014 rate  
 12 case, Case No. ER-2014-0370. KCPL's proposal was to annuitize (amortize) each lump sum  
 13 payment over a period of approximately 14 years and treated the lump sum as if it were an  
 14 annuity. In that 2014 rate case neither KCPL nor Staff found it logical to combine and average  
 15 large-dollar lump sum and annuity SERP payments as Mr. Young proposes in this rate case.

16 **Q. Why does Staff's mixing lump sum SERP payments with normal recurring SERP**  
 17 **annuity payments not make any sense?**

18 A. The answer to this question is best illustrated in the example below:

	Staff	Staff	OPC	OPC
SERP retiree A	annuity	\$74	annuity	\$74
SERP retiree B	annuity	\$50	annuity	\$50
SERP retiree C	annuity	\$60	annuity	\$60
SERP retiree D	annuity	\$76	annuity	\$76
SERP retiree E	lump sum	<u>\$400</u>	annuity	<u>\$40</u>
Average		\$132		\$60

19  
 20 The approach taken by Mr. Young is to group all SERP payments (annuity and lump sum)  
 21 together and take an average to calculate a normalized level for ratemaking (See Staff

1 SERP workpaper attached as Schedule CRH-S-10). In the SERP example above, this  
2 amount is \$132. Mr. Young describes the Staff's approach as follows "Staff normalized  
3 the actual cash payments, both annuity payments and lump sum payments, paid by LAC  
4 during the three prior fiscal years (FY 2014 – FY 2016), to compute a "total company"  
5 SERP cost."

6 The problem with Mr. Young's approach, in addition to being a radical departure from past  
7 Staff practice, is easily observed from reviewing the table above. Note that the payment  
8 of \$400 to SERP retiree E under Staff's method is a lump sum or prepayment of future  
9 annual SERP payments. If the life expectancy of SERP retiree E is 10 years after retirement  
10 from Laclede, then the correct annual amount of SERP to reflect in Laclede's cost of  
11 service is one-tenth of the lump sum payment, or \$40. This is the annuitization approach  
12 adopted by Staff in KCPL's 2014 and 2016 rate cases as sponsored by Staff witness Keith  
13 Majors.

14 Mr. Young, however, fails to show an understanding or at least a recognition of this  
15 ratemaking theory and rationale and thus his SERP normalization and annualization  
16 calculation is grossly overstated in favor of utility shareholders and detrimental to utility  
17 ratepayers. Utility ratepayers should only be required to reimburse the utility for  
18 reasonable and prudent utility expenditures that are reflective of an ongoing cost of  
19 providing service. Mr. Young fails to meet this standard in his proposed SERP  
20 recommendation to the Commission.

21 The position taken by OPC in this case is that all reasonable annual payments made to  
22 SERP retirees should be reflected in cost of service and OPC's proposed adjustment in this  
23 case does just that. As can be seen in the example above, Staff's flawed approach more  
24 than doubles the appropriate amount to include in cost of service and this flawed approach  
25 should be rejected by the Commission.



1 **Q. At page 12 line 18 of his rebuttal testimony Mr. Young describes OPC's ratemaking**  
2 **adjustment for SERP. Do you agree with his description?**

3 A. No. He states correctly that OPC supports an on-going SERP cost of \$24,097. However,  
4 he incorrectly states that OPC's adjustment "is an annualization of ongoing annuities after  
5 the removal of what OPC deemed as one "excessive" recurring payment.

6 OPC's adjustment did not exclude any actual payment but only normalized by averaging,  
7 one excessive payment. OPC's SERP adjustment was clearly reflected in OPC's SERP  
8 workpaper provided to Staff, should be clearly obvious to Staff witness Young. OPC has  
9 a standard for excessive SERP payments and it appears the Staff does not. It appears that  
10 Staff is more willing to accept whatever the utility decides to pay a SERP retiree in  
11 additional pension benefits.

12 **Q. Did the Staff used to have a standard for excessive SERP annuity payments?**

13 A. Yes. In past rate cases Staff stated that its ceiling on allowable SERP annuity payments  
14 was \$50,000.

15 **Q. What annual SERP payment does OPC consider excessive?**

16 A. OPC removed one SERP annuity payment in the amount to \$201,460, which is clearly  
17 excessive, and added back to its adjustment the average of all annual SERP payments  
18 (excluding the excessive payment) made by Laclede in 2016. OPC's adjustment did not  
19 exclude any actual payment but only normalized by averaging, one excessive payment.

20 **Q. What is was total annual SERP payment that Laclede paid to its SERP retirees in**  
21 **2016?**

22 A. This amount was \$222,880 for 9 SERP retirees and this amount includes one payment in  
23 the amount of \$201,460 that OPC considered to be excessive. The total 2016 SERP retiree  
24 payments, excluding this one excessive payment, is \$21,420. The average SERP payment  
25 for these 8 SERP recipients is \$2,667.

1 **Q. Is this average SERP payment of \$2,667 consistent with what other Missouri utilities**  
2 **have incurred?**

3 A. Yes. I have audited and analyzed the annual SERP payments by KCPL, Aquila, Inc.,  
4 KCPL-GMO, Ameren Missouri, MGE, Laclede and the Empire District Electric Company,  
5 virtually all the major utilities operating in the state of Missouri. Based on my review and  
6 audits of these utility SERP payments, I estimate that the average SERP annuity payments  
7 of all Missouri utility SERP recipients is between \$2,000 and \$16,000. The amount OPC  
8 is proposing for Laclede in this rate case falls within this range and is reasonable and  
9 appropriate.

10 **Q. Does this conclude your surrebuttal testimony?**

11 A. Yes.

111 FERC ¶61,501  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

FILED<sup>2</sup>

JAN 5 2017

Missouri Public  
Service Commission

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Jurisdictional Public Utilities and Licensees  
Natural Gas Companies  
Oil Pipeline Companies

Docket No. AI05-1-000

ORDER ON ACCOUNTING FOR PIPELINE ASSESSMENT COSTS

(Issued June 30, 2005)

**I. Introduction**

1. The Office of Pipeline Safety (OPS) of the U.S. Department of Transportation has developed regulations that require natural gas pipeline and hazardous liquid pipeline operators to develop, implement and follow an integrity management program for segments of pipeline in high consequence areas (IM Regulations).<sup>1</sup> On November 5, 2004, the Federal Energy Regulatory Commission (Commission) published a notice of a proposed accounting release, which would require that an entity recognize costs incurred in performing pipeline assessments that are part of a pipeline integrity management program as maintenance expense and would apply to all entities under the jurisdiction of the Commission.<sup>2</sup> This order expands on the accounting guidance in the proposed

<sup>1</sup> See 49 C.F.R. § 192 (2004), Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Pipelines), Final Rule effective January 14, 2004; and 49 C.F.R. § 195 (2004), Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Hazardous Liquid Operators with 500 or more miles of Pipeline), Final Rule effective February 15, 2002. In general, "high consequence areas" are locations surrounding a pipeline where a leak or rupture could do the most harm to humans or the environment. See definition contained in 49 C.F.R. § 192.903 and 49 C.F.R. § 195.450 (2004).

<sup>2</sup> *Accounting for Pipeline Assessment Costs*, Notice of Proposed Accounting Release, Docket No. AI05-1-000 (Nov. 5, 2004), 69 Fed. Reg. 67,727 (Nov. 19, 2004), referred to herein as the November 5 notice. The proposed accounting release only provided accounting guidance on the costs of performing pipeline assessment techniques like smart pigging, hydrostatic testing, and direct assessment. It did not provide guidance on other actions to be taken as part of an integrity management program.

Docket No. AI05-1-000

-2-

accounting release and addresses the proper accounting for costs that pipeline operators will incur in implementing all aspects of a pipeline integrity management program, not just pipeline assessment activities. This order concludes that certain costs incurred related to a pipeline integrity management program should be capitalized, while others should be expensed, as discussed below. This order benefits the public because it interprets the Commission's existing accounting rules and standardizes and properly classifies expenditures made by pipelines in connection with an integrity management program.

## II. Background

### A. Integrity Management Programs Required by the OPS

2. The IM Regulations require natural gas and hazardous liquid pipeline operators to assess, evaluate, repair and validate, through a comprehensive analysis, the integrity of pipeline segments that could affect high consequence areas in the event of a leak or failure. This process requires pipeline operators to incur costs to develop integrity management plans, prepare pipelines for inspection, conduct pipeline assessments, make subsequent repairs, and perform other ongoing activities of an integrity management program.
3. To develop an integrity management plan, pipeline operators must first identify pipeline segments that are located in high consequence areas and prepare a written plan for an initial assessment of the identified pipeline segments. Documents must also be prepared to detail the testing methods to be used, risk factors considered in selecting the appropriate testing method, and the schedule of testing and inspecting. In support of these activities, operators must integrate into a recordkeeping system all information relevant to the integrity management plans related to each high consequence area.
4. Next, pipeline operators must make necessary additions, modifications, and replacements to segments of pipeline that require inline inspection tools, like a smart pig, that are not currently designed for inline inspections. These activities may include, for example, installing pig launchers and receivers and replacing portions of pipe that cannot currently accommodate inline inspection tools.
5. Pipeline operators must then assess the identified pipeline segments to locate anomalies such as cracks, dents, and leaks using hydrostatic tests, smart pigs, or direct assessment activities. The IM Regulations require gas pipeline operators to complete an initial assessment of 50 percent of all pipe located in a high consequence area by

Docket No. AI05-1-000

-3-

December 2007, complete the remaining 50 percent by December 2012, and conduct re-assessments every 7 to 10 years.<sup>3</sup> Oil pipeline operators will be required to complete a baseline assessment of 50 percent of all pipe located in a high consequence area by February 2005, complete the remaining 50 percent by August 2009, and conduct re-assessments every 5 years.

6. Any major defect identified through pipeline assessments must be investigated and remedied within prescribed time limits. The required remedial action will depend upon the nature of the discovered defects. Accordingly, a pipeline may be required to incur minor repairs, like recoating, or a pipeline may need to replace large segments of pipe. Pipeline operators must also evaluate the need for additional preventative and mitigative measures to protect high consequence areas and enhance public safety. This evaluation may result in installing automatic shut-off valves or remote control valves and installing computerized monitoring and leak detection systems.

7. Pipeline operators will also be required to incur ongoing program costs to conduct training and drills, enhance damage prevention programs, and meet periodic reporting requirements to comply with the IM Regulations.

#### **B. Proposed Accounting Release**

8. The Commission issued the November 5 proposed accounting release to clarify the proper accounting for pipeline assessment activities in an integrity management program. The proposed accounting release noted that many jurisdictional entities have accounting policies that recognize pipeline assessment activities as a maintenance activity when performed specifically for the purpose of testing and reporting on the condition and integrity of existing pipe to prevent failure. The proposed accounting release also noted that other entities have accounting policies that recognize the same costs as capital expenditures. Accordingly, the Commission was concerned that the increase in pipeline assessment costs as a result of the new IM Regulations, coupled with the diverse accounting practices in the industry, could severely reduce the comparability of financial statements among jurisdictional entities and make review of existing rates more difficult.

9. The Commission proposed that pipeline assessment activities related to an integrity management program be accounted for as maintenance and charged to expense in the period incurred. The Commission allowed all interested parties an opportunity to comment on the proposed accounting for pipeline assessment cost.

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<sup>3</sup> The re-assessment intervals relate to pipelines operating at or above 50 percent of the specified minimum yield strength of the pipe.

Docket No. AI05-1-000

-4-

**C. Comments on the Proposed Accounting Release**

10. The proposed accounting release was noticed on November 5, 2004, and comments were due as provided in the notice. The Commission received fourteen comments concerning various aspects of the proposed accounting release. The majority of commenters were supportive of the Commission's effort to provide guidance on the proper treatment of pipeline assessment costs.<sup>4</sup> Two general areas of concern were raised: whether the costs of pipeline assessment activities should be expensed or capitalized, and the proposed effective date of any new accounting regulations.

**1. Should the Costs of Pipeline Assessment Activities be Expensed or Capitalized?**

11. Several commenters agreed that the costs of pipeline assessment activities performed as part of a pipeline integrity management program should be accounted for as maintenance expense. Other commenters argued that there are certain instances when capitalization of such costs is appropriate. Several commenters stated it was appropriate to capitalize the initial assessment costs of a new or a newly repaired pipeline being converted to a new service. One commenter thought that the costs of pipeline assessments performed as part of an integrity management program should be expensed except when the activity results in substantial amounts of pipeline being replaced or recoated. Commenters also stated that technologically advanced pipeline assessment costs should be capitalized if the assessment could detect original construction defects and the subsequent rehabilitation improves the pipeline beyond its original construction. Finally, several commenters stated that any assessment which leads to a capital expenditure should be capitalized.

12. Other commenters disagreed with the proposal to expense the costs of assessment activities in an integrity management program. These commenters generally viewed that all integrity management work, including assessments, consists of a series of activities that directly and immediately enhance pipeline facilities. As such, they argued that all pipeline assessment costs should be capitalized. The majority of these commenters

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<sup>4</sup> Comments were received from Association of Oil Pipelines, Interstate Natural Gas Association of America, Texas Pipeline Association, Kinder Morgan Interstate Pipelines, Williston Basin Interstate Pipeline Company, Embridge Energy Partners LP, El Paso Corp., NiSource Inc., Northern Natural Gas Company, Duke Energy Gas Transmission, Alliance Pipeline LP, Colonial Pipeline Company, Magellan Pipeline Company, LP, and Southern California Gas Company & San Diego Gas and Electric Company.

Docket No. AI05-1-000

-5-

claimed that capitalizing pipeline assessment costs is consistent with generally accepted accounting principles (GAAP) under Emerging Issues Task Force Issue 90-8, Capitalization of Costs to Treat Environmental Contamination (EITF 90-8). The commenters explained that EITF 90-8 concludes that environmental contamination treatment costs should be charged to expense except when the costs extend the life, increase the capacity, or improve the safety or efficiency of property. These commenters stated that pipeline assessment activities are directly related to the subsequent repairs of a pipeline which will extend the life, increase the capacity, and improve the safety or efficiency of the pipeline.

13. These commenters stated that capitalizing pipeline assessment costs is consistent with GAAP because they claim an assessment has a lasting value that remains long after the integrity assessment has been completed. One commenter explained that under Financial Accounting Standards Board Concepts Statement No. 6, Elements of Financial Statements, assets are defined as probable future economic benefits obtained or controlled by a particular entity as a result of past transactions or events. The commenter also explained that expenses are outflows or "using up" of an asset from carrying on business activities. These commenters stated that pipeline assessments have the characteristics of an asset, rather than normal operating expenses that are of no particular value after the expenditure has been made. Commenters also explained that pipeline assessments create a quantifiable knowledge base on which safety remediation will be based which has value. Commenters claimed that pipeline integrity information is vital, and that not having this information would make them willing to pay less for a pipeline system. Commenters also argued that GAAP permits the size of an expenditure as a consideration for capitalization.<sup>5</sup>

14. These commenters also stated that Operating Expense Instructions No. 2 could not have been intended to include pipeline assessment costs. The commenters stated this Instruction was established long before the Pipeline Safety Improvement Act of 2002 and could not have envisioned the extent and magnitude of expenditures now to be required by the IM Regulations.

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<sup>5</sup> The commenters' argument is based on the Commerce Clearing House *Accounting Research Manager*, Interpretations and Examples\08. Property, Plant, Equipment and Natural Resources, Measurement - Capitalization of Costs Incurred During Ownership (2005).

Docket No. AI05-1-000

-6-

15. Several of these commenters cited past orders by the Chief Accountant which permitted the capitalization of pipeline assessment costs when it was a part of a major rehabilitation project. They assert that the pipeline integrity management program required by the IM Regulations represents a major rehabilitation project. Additionally, the commenters stated that the baseline assessments required by the IM Regulations are properly characterized as one-time events rather than ongoing inspections, tests, or maintenance and the costs meet the Chief Accountant's standards for capitalization.

2. Effective Date

16. The majority of commenters opposed the proposed effective date of January 1, 2005. Alternatively, most of the commenters suggested the Commission have a January 1, 2006 effective date. The commenters stated that more time is needed to develop controls and procedures to separately identify and properly account for components of projects. The commenters also stated that more time is needed to allow for more discussion and consideration of the complexities of all the issues and allow for petitions for rehearing.

17. The commenters noted that retroactive accounting treatment would have unfair rate consequences. Commenters also state that in determining whether retroactive application of a new rule is appropriate, a key consideration is whether retroactive application would produce substantial inequitable results, with particular reference to whether parties relied on the old standard. Additionally, commenters note that a prospective approach is consistent with the approach employed by other accounting standard bodies to ensure orderly dissemination of new information in the capital markets.

IV. Discussion

18. As a result of pipeline integrity management programs mandated by the IM Regulations, pipeline operators will incur costs to: (1) prepare a plan to implement the program; (2) identify high consequence areas; (3) develop and maintain a recordkeeping system to document program implementation and actions; (4) prepare affected pipeline segments for inspection; (5) inspect affected pipeline segments; and (6) develop and perform remediation actions to correct an identified condition which could threaten a pipeline's integrity.

19. The proposed accounting release addressed the proper accounting for only the assessment or inspection part of the integrity management program under the Uniform System of Accounts (USofA). However, based on the comments received in response to the proposed accounting release, it became apparent that there is different accounting



Docket No. AI05-1-000

-7-

taking place regarding the costs related to the various other activities pipelines are performing to implement their integrity management programs. Consequently, the Commission will take this opportunity to provide specific guidance on how jurisdictional entities shall account for all activities related to developing and implementing an integrity management program.

20. Before addressing how entities must account for costs incurred as part of an integrity management program, we want to first address the claim raised by commenters that all costs related to integrity management programs should be capitalized because they extend the useful lives and improve the efficiency and safety of the pipeline assets. These commenters also contend that all costs should be capitalized since they in effect are part of a major rehabilitation effort, and the Commission has permitted similar costs that are part of a rehabilitation project to be capitalized in the past.

21. The Commission's accounting rules provide that costs incurred to inspect, test and report on the condition of plant to determine the need for repairs or replacements are to be charged to maintenance expense in the period the costs are incurred.<sup>6</sup> The pipeline integrity management program as implemented by the IM Regulations incorporates a process for continual evaluation and assessment or inspection, along with remediation, so as to maintain the integrity of the pipeline. Its primary aim is not to increase the capacity or efficiency of the pipeline. Broadly speaking, pipeline assessment activities provide information about the condition of existing facilities to ensure that operation of the pipeline remains within established safety parameters. The act of inspecting or assessing a pipeline segment does not by itself increase the useful life of a pipeline asset or improve its efficiency.

22. Additionally, since the integrity management program provides for a process of continual evaluation and assessment it can not be considered analogous to those one-time major rehabilitation projects where we have allowed capitalization of assessment costs in the past. Accordingly, we clarify that entities may not capitalize all integrity management costs, but must either capitalize or expense those costs as discussed below.

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<sup>6</sup> See Operating Expense Instructions No. 2, Maintenance, Item 2 of 18 C.F.R. Parts 101 and 201 (2004) and Instructions for Operating Revenues and Operating Expenses 4-4, paragraph A of Part 352 (2004).

Docket No. AI05-1-000

-8-

23. As to the treatment to be afforded specific categories of actions under the integrity management program requirements, we will first clarify how entities should account for: (1) the costs that pipeline operators incur to prepare a plan to implement the program; (2) the costs that pipeline operators incur to identify high consequence areas; and (3) the costs that pipeline operators incur to develop and maintain a recordkeeping system to document program implementation and actions.

24. Under the requirements of the USofA, costs incurred in preparing instructions for operations and maintenance activities are required to be expensed.<sup>7</sup> Consequently, costs incurred in preparing a plan to implement an integrity management program should be charged to the appropriate operation and maintenance account in the period incurred. Costs incurred to identify high consequence areas must also be charged to maintenance expense as they are part of the process for determining what segments to inspect or test, which, as discussed above, is a maintenance activity.

25. With certain exceptions discussed below in footnote 8, the costs incurred to develop and maintain a recordkeeping system to document integrity management program implementation and actions must also be charged to the appropriate operation and maintenance expense account in the period incurred, since these costs relate to maintaining the integrity of the pipeline, a maintenance activity.<sup>8</sup> Also, the incurrence of these costs does not provide any measurable benefits for future accounting periods and, as such, capitalization of these types of costs is improper.

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<sup>7</sup> See Operating Expense Instructions No. 1, Supervision and Engineering, Item 3 of 18 C.F.R. Parts 101 and 201 (2004) and Instructions for Operating Revenues and Operating Expenses 4-4, paragraph A of 18 C.F.R. Part 352 (2004).

<sup>8</sup> Internal and external costs, if any, incurred to develop internal-use computer software during the application development stage should be capitalized. In addition, costs for upgrades and enhancements to existing internal-use software that result in additional functionality should be capitalized. See the American Institute of Certified Public Accountants' Statement of Position Number 98-1, Accounting for Costs of Computer Software Developed or Obtained for Internal Use.

Docket No. AI05-1-000

-9-

26. Next, we clarify that pipeline additions or modifications undertaken to prepare for a pipeline assessment should be accounted for in accordance with applicable USofA requirements related to the addition and replacement of plant.<sup>9</sup> For example, pig launchers or receivers installed or pipe modified to accommodate pigging can be capitalized if they are considered retirement units or result in a substantial addition.

27. Further, as noted above, the Commission's accounting rules provide that costs incurred to inspect, test and report on the condition of plant to determine the need for repairs or replacements are to be charged to maintenance expense. Accordingly, costs to inspect affected pipeline segments under an IM program must be charged to maintenance expense in the period the costs are incurred.

28. Finally, remedial and mitigation actions to correct an identified condition which could threaten a pipeline's integrity should also be accounted for in accordance with applicable USofA requirements related to the addition and replacement of plant.<sup>10</sup> These actions may include replacing identified segments of pipe or installing automatic shut-off valves and computerized monitoring and leak detection systems. If an entity replaces a retirement unit as part of a remedial action, then those costs should be capitalized to the appropriate plant account. However, minor items of property replaced as part of a remedial action should be expensed to the appropriate maintenance account.

29. The PAR included an effective date of implementation of January 1, 2005. In order to allow companies sufficient time to develop controls and procedures to implement any necessary changes to their accounting and reporting systems, we will make this guidance effective January 1, 2006 and prospective in application. Amounts capitalized in periods prior to January 1, 2006 will be permitted to remain as recorded.

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<sup>9</sup> See Electric Plant Instruction No. 10, Additions and Retirements of Electric Plant, 18 C.F.R. Part 101 (2004); Gas Plant Instruction No. 10, Additions and Retirements of Gas Plant, 18 C.F.R. Part 201 (2004); and Carrier Property Instruction No. 3-6, Replacements, 18 C.F.R. Part 352 (2004).

<sup>10</sup> *Id.*

Docket No. AI05-1-000

-10-

30. In reaching the foregoing accounting determinations the Commission is aware that implementing pipeline integrity management programs will involve significant costs. In the OPS' Final Regulatory Evaluation (FRE), it estimates that the total cost of complying with its IM Regulations over a twenty year period will be \$4,701.38 million.<sup>11</sup> Part of this cost is attributable to entities that are jurisdictional to the Commission such as interstate natural gas pipelines and part is attributable to non-jurisdictional entities such as local distribution companies. The Interstate Natural Gas Association of America estimates that 58 percent, or approximately \$2,730 million of the overall \$4,701.38 million cost of the rule, will be incurred by entities that are jurisdictional to the Commission.<sup>12</sup> The first year cost of complying with the IM Regulations for all entities is estimated to be \$793.77 million, of which \$262.12 million is estimated to be the cost of baseline testing. Since the integrity management programs are in their second year, these costs have already been incurred. For years two through seven, the total annual cost of complying with the IM Regulations by all entities is estimated to be \$309.78 million. In years eight through ten, the total annual cost of complying with the IM Regulations is estimated to be \$345.87 million. For years two through ten, the baseline testing component of this cost is \$262.12 million, or 79 percent of the overall cost for that period. Baseline testing includes both the estimated cost of testing the pipelines and the cost of required piping modifications to accommodate testing.<sup>13</sup> Assuming the pipeline inspection costs incurred during years one through ten are approximately the same as those estimated to be incurred in years eleven through twenty, approximately \$208 million of the \$262.12 million annual figure for baseline testing will be capitalized as it will consist of costs such as the addition of pig launchers and receivers, and the replacement of portions of pipe to allow the use of inline testing techniques as discussed above. Thus, a significant portion of the cost of integrity management programs can be expected to be capitalized as a result of the guidance provided in this order.

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<sup>11</sup> See Final Regulatory Evaluation, Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines), U.S. Department of Transportation, Research and Special Programs Administration, Docket RSPA-00-7666-356, at 42-58 and Exhibit 8. Exhibit 8 of the FRE is attached to this order.

<sup>12</sup> Interstate Natural Gas Association of America's comments, filed January 19, 2005, at 16.

<sup>13</sup> See FRE at 52.

Docket No. AI05-1-000

-11-

31. Pipeline operators have also implemented other integrity management programs in non-high consequence areas to prevent the negative social, economic, and legal impacts of a major pipeline incident. While our guidance here focuses on the accounting treatment of costs incurred in compliance with the Pipeline Safety Act and OPS implementing regulations, the same principles would apply for accounting for similar costs incurred in pipeline integrity programs that fall outside the Pipeline Safety Act and those specific OPS regulations.

The Commission orders:

(A) Pipelines shall account for expenditures in furtherance of pipeline integrity management systems in accordance with the requirements of this order.

(B) This order shall be effective for all IM expenditures incurred on or after January 1, 2006.

By the Commission. Commissioner Brownell dissenting in part with a separate statement attached.

( S E A L )

Magalie R. Salas,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Accounting For Pipeline Assessment Costs

Docket No. AI05-1-000

(Issued June 30, 2005)

BROWNELL, Commissioner, dissent in part:

The Office of Pipeline Safety (OPS) issued regulations in December 2003 to establish new integrity management requirements (IM Regulations). OPS estimates the cost of compliance for both jurisdictional and non-jurisdictional pipelines to be \$4.7 billion over twenty years. Our Notice of Proposed Accounting Release (PAR) raised two issues: whether these costs should be expensed or capitalized, and the proposed effective date of any new regulations.

The order finds that the accounting guidance provided herein should be effective January 1, 2006 and amounts capitalized prior to January 1, 2006 will be permitted to remain as recorded. I agree. The order also finds that the costs incurred after January 1, 2006 should generally be expensed. The basis for this finding is the conclusion that the primary aim of the IM Regulations is not to increase the capacity or efficiency of the pipeline. As such, the order treats the costs of implementing the IM Regulations as ordinary maintenance costs which must be expensed pursuant to our accounting instructions. The order makes two notable exceptions. First, the order expressly directs that all internal and external costs computer enhancements should be capitalized.<sup>1</sup> Second, the order states that costs initially incurred to modify a pipeline to permit the use of in-line inspection tools will be capitalized.<sup>2</sup> Since the net effect of these findings is that most of the costs necessary to set up the new safety program are capitalized and the on-going costs incurred to maintain the program are expensed, I do not disagree with the outcome.

However, I do not view these costs solely as costs to perform routine or ordinary maintenance activities. OPS pointed out that Congress directed additional safety measures that would impose a change and require activities not previously performed.<sup>3</sup> OPS determined that one benefit from the new safety program would be increased capacity (and efficiency) because pipelines may be allowed to operate at higher pressures. From a short term perspective, increases in operating pressures could make additional gas available in rapid order to alleviate an emergency, like that experienced in

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<sup>1</sup> Order at fn 8.

<sup>2</sup> Order at paragraph 30.

<sup>3</sup> OPS's Final Regulatory Evaluation at 2 and 8.

Docket No. AI05-1-000

-13-

California in 2000. From a long term perspective, increases in pressures could obviate or delay the need for new pipelines.<sup>4</sup> OPS also stated that one of the principle benefits of the IM Regulations is the reduction in the number of accidents that result in deaths, serious injury and property damage.<sup>5</sup>

Specifically, OPS identified 9 cost items that will be incurred to implement its IM Regulations. Based on OPS' explanations, those cost items fall into two categories: costs necessary to set up the new safety program and the costs of maintaining on-going compliance. Some examples are instructive. Data Integration involves first year costs to retrieve old data, prepare it for use in future integrity information, and to realign data management systems to facilitate integration. OPS characterizes retrieval of old data as a "one-time" cost for "set up".<sup>6</sup> Subsequently, OPS estimates annual expenditures for years two through twenty. Integrity Plans involves first year costs to create the plans, which OPS again describes as a "one-time" cost and annual expenses for years 2 through 20 to "review the plans, makes changes as needed, and to prepare routine reports."<sup>7</sup> OPS differentiates assessment activity as either Baseline Testing or Subsequent Testing. Baseline Testing involves setting up the new safety program and the initial inspections and evaluations, including all modifications to the pipeline infrastructure to permit the use of in-line inspection tools. The costs for Baseline Testing extend beyond the first year because the IM Regulations allow ten years to complete the initial assessment. Once the initial testing is completed on a segment of pipe, Subsequent Testing involves the on-going, periodic reassessments and reevaluations of those pipeline segments.<sup>8</sup> The costs necessary to set up a new safety program are not the routine maintenance expenditures addressed by our accounting instructions.

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<sup>4</sup> Id. at 30.

<sup>5</sup> Id. at 17.

<sup>6</sup> Id. at 56 and 60 and Exhibit 8.

<sup>7</sup> Id. at 40 and 60 and Exhibit 8.

<sup>8</sup> Id. at 52 and 60 and Exhibit 8.

Docket No. AI05-1-000

-14-

In sum, the IM Regulations encompass more than standard maintenance. The IM Regulations require both an initial rehabilitation of the pipeline infrastructure by setting up a new safety program and the subsequent on-going compliance with that new safety program. The new safety program will extend the life, increase the capacity and improve the safety of the pipeline infrastructure. Therefore, consistent with GAAP accounting and Commission precedent, I would permit pipelines to capitalize all first year costs and all Baseline Testing costs after the first year.<sup>9</sup>

For these reasons, I dissent in part with today's order.

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Nora Mead Brownell  
Commissioner

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<sup>9</sup> The order permits 79 percent of Baseline Testing costs after the first year to be capitalized on the assumption that those expenditures are pipeline modifications costs. See Order at paragraph 30.



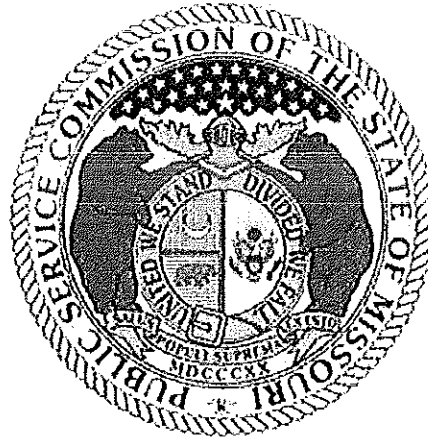
Docket No. AI05-1-000

Attachment

**EXHIBIT B. THE ESTIMATED COST OF THE FINAL RULE**  
(Costs in millions of 2001 dollars)

Year	Segment VS	Integrity Plans	Valve Analysis	Annual Repairs	Baseline Testing	Subsequent Testing	Data Integration	Prevention & Mitigation	Total
1	15.65	104.13	11.53	11.08	262.12	-	387.32	2.55	793.77
2	-	11.53	-	1.38	262.12	-	32.21	2.55	309.78
3	-	11.53	-	1.38	262.12	-	32.21	2.55	309.78
4	-	11.53	-	1.38	262.12	-	32.21	2.55	309.78
5	-	11.53	-	1.38	262.12	-	32.21	2.55	309.78
6	-	11.53	-	1.38	262.12	-	32.21	2.55	309.78
7	-	11.53	-	1.38	262.12	-	32.21	2.55	309.78
8	-	11.53	-	1.38	262.12	35.84	32.21	2.81	345.87
9	-	11.53	-	1.38	262.12	35.84	32.21	2.81	345.87
10	-	11.53	-	1.38	262.12	35.84	32.21	2.81	345.87
11	-	11.53	-	1.38	-	51.91	32.21	2.81	99.82
12	-	11.53	-	1.38	-	51.91	32.21	2.81	99.82
13	-	11.53	-	1.38	-	51.91	32.21	2.81	99.82
14	-	11.53	-	1.38	-	51.91	32.21	2.81	99.82
15	-	11.53	-	1.38	-	57.31	32.21	2.81	105.22
16	-	11.53	-	1.38	-	57.31	32.21	2.81	105.22
17	-	11.53	-	1.38	-	57.31	32.21	2.81	105.22
18	-	11.53	-	1.38	-	50.89	32.21	2.81	98.81
19	-	11.53	-	1.38	-	50.89	32.21	2.81	98.81
20	-	11.53	-	1.38	-	50.89	32.21	2.81	98.81
								30-yr Total	4,701.35

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 ) File 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 ) File No. GO-2016-0333  
Replacement Surcharge in its Laclede Gas ) Tariff No. YG-2017-0047  
Service Territory )

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**REPORT AND ORDER**

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Issue Date: January 18, 2017

Effective Date: January 28, 2017

The hydrostatic testing at issue, however, is not an ISRS eligible expense. Pursuant to Section 393.1009(3), RSMo (Supp. 2012), the first criteria for ISRS eligibility is that it must be a gas utility plant project, the definition of which includes, "Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life. . ." of a pipe.<sup>103</sup> Laclede argues that hydrostatic testing extends the useful life of a pipe in that the testing provides confidence to the company that the pipeline is expected to last for an additional period of years. However, hydrostatic testing must first qualify as a project similar to main relining, service line insertion, or joint encapsulation before it matters whether useful life is extended.

The evidence shows that nothing physically is added to or taken away from the pipes that are tested.<sup>104</sup> If the testing shows no leaking or deterioration the maximum allowable operating pressure is determined, but nothing further occurs. The testing provides confidence to the company that the pipeline is expected to last for an additional period of years, but without first bearing some similarity to relining, insertion, or joint encapsulation projects, that extra confidence is irrelevant to ISRS eligibility.<sup>105</sup>

Consistent with this conclusion, the Federal Energy Regulatory Commission (FERC) has determined that hydrostatic testing does not extend the useful life of a pipeline.<sup>106</sup> That determination was expressly for the purpose of expanding on accounting guidance that had been previously issued in an "accounting release."<sup>107</sup>

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<sup>103</sup> Emphasis added.

<sup>104</sup> Tr. 123.

<sup>105</sup> Tr. 123-124.

<sup>106</sup> *Order on Accounting for Pipeline Assessment Costs*, FERC Docket No. AI05-1-000 (issued June 30, 2005) (FERC Order); OPC Exhibit 5.

<sup>107</sup> FERC Order, para. 1.

The FERC order specifically addresses the costs incurred when conducting baseline testing,<sup>108</sup> “The act of inspecting or assessing a pipeline segment does not by itself increase the useful life of a pipeline asset or improve its efficiency.”<sup>109</sup> While the Commission is not bound by the FERC decision, it is a helpful guide in the Commission’s analysis of this issue.

Laclede and MGE have not shown the pipe at issue will last any longer after testing than it would have lasted without. The only thing that has changed is that the company now has knowledge that it did not have previously. Even if the company had shown hydrostatic testing results in longer-lasting pipe, it has not shown that hydrostatic testing meets the definition of an ISRS-eligible project. The Commission concludes that this type of hydrostatic testing is not an ISRS-eligible expense.

#### **V. Decision**

In making this decision, the Commission has considered the positions and arguments of all of the parties. After applying the facts to the law, the Commission finds that the substantial and competent evidence in the record supports the conclusion that Laclede and MGE have met, by a preponderance of the evidence, their burden of proof to demonstrate that the petitions and supporting documentation comply with the requirements of Sections 393.1009 to 393.1015, RSMo (Supp. 2012) with the exception of the hydrostatic testing expense at issue. The Commission concludes that Laclede and MGE shall be permitted to change their ISRS rates to recover ISRS revenues equal to those set out by Staff in its Recommendations, less the hydrostatic testing expenses.

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<sup>108</sup> FERC Order, para. 30.

<sup>109</sup> FERC Order, para. 21.

13. Missouri Gas Energy, an Operating Unit of Laclede Gas Company shall file a tariff sheet in compliance with this order no later than 1:00 p.m., January 19, 2017.

14. Staff shall review the tariff sheet required by Ordered Paragraph 13 above once it is filed and file a recommendation as to whether the tariff sheet is in compliance with this order no later than 4:00 p.m., January 20, 2017.

15. Any party wishing to respond or comment on the tariff sheet required by Order Paragraph 13 above shall file its response no later than 4:00 p.m., January 20, 2017.

16. This order shall become effective on January 28, 2017.

**BY THE COMMISSION**



*Morris L. Woodruff*  
Morris L. Woodruff  
Secretary

Hall, Chm., Stoll, Kenney, and Coleman, CC, concur,  
Rupp, C., dissents,  
and certify compliance with the provisions  
of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,  
on this 18<sup>th</sup> day of January, 2017.

Laclede Gas Company / Missouri Gas Energy  
GR-2017-0215 / GR-2017-0216

Response to OPC Data Request 1054

Question:

1054.

Please list the work order number and the date (month and year) placed in service for each and every plant work order that includes dollars capitalized for hydrostatic testing for the period 2004 through 2016.

For each work order identified above, please also provide the dollar amount charged to the work order for hydrostatic testing.

Response:

Please refer to the attached spread sheet which lists the docket and amount of hydrostatic testing work order costs placed in service.

Signed by: Glenn Buck

Missouri Gas Energy  
Hydrostatic Testing Costs included in MGE ISRS Plant Investment

Case No.	In service date	Amount	Total for Case
<b><u>GO-2016-0332</u></b>			
WO - 9914	Sep-16	\$ 1,299,063.55	
WO - 7935	Various 2016	\$ (5,197.57)	
WO - 9253	Sep-16	\$ 553,538.41	
			\$ <u>1,847,404.39</u>
<b><u>GO-2016-0197</u></b>			
WO - 6690	Sep-15	\$ (432.73)	
WO - 9253	Various 2015-2016	\$ 933,211.52	
WO - 7935	Jan-16	\$ 372,068.68	
			\$ <u>1,304,847.47</u>
<b><u>GO-2015-0343</u></b>			
WO - 6690	Various 2015	\$ 158,462.68	
			\$ <u>158,462.68</u>
<b><u>GO-2015-0270</u></b>			
WO - 4000	Sep-14	\$ (9,517.91)	
WO - 4638	Sep-14	\$ (15,326.11)	
			\$ <u>(24,844.02)</u>
<b><u>GR-2015-0025</u></b>			
WO - 4000	Various 2014	\$ 242,799.97	
WO - 4638	Various 2015	\$ 620,408.57	
			\$ <u>863,208.54</u>
Grand Total included in ISRS			\$ <u>2,301,674.67</u>

**Laclede Gas Company / Missouri Gas Energy**  
**GR-2017-0215 / GR-2017-0216**

**Response to OPC Data Request 1054.1**

**Question:**

1054.1

In response to OPC data request (DR) 1054 which asked for data from 2004 and forward, MGE provided a spreadsheet labeled "Hydrostatic Testing Costs included in MGE ISRS Plant Investment" which lists the docket and amount of hydrostatic testing work order costs placed in service beginning in 2014. Since the DR requests information from 2004 and forward, the response to this DR indicates that MGE did not start capitalizing hydrostatic tests until 2014. 1) Is this correct? 2) On what date did MGE begin to capitalize hydrostatic tests? 3) If this date was prior to the date of the data provided in response to OPC DR 1054, please provide a copy of MGE's CPR and plant records which reflects the dollar amount and date that hydrostatic tests were capitalized to a plant account.

**Response:**

1. No.
2. Hydrostatic testing is routinely performed as part of the construction of a pipe, in order to establish an MAOP for the line. This test is capitalized as part of the cost of construction.
3. Prior to the ISRS information provided in the response to DR 1054, there were two other work orders in which hydrostatic testing was capitalized but which were not included in an ISRS filing. WO 20401121474 and WO 20401132311. The lead sheets are attached. The amounts included in Plant in Service were \$704,540.55 and \$701,337.06 respectively.

Signed by: Mike Noack



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



In the Matter of the Tariff Filing of Laclede Gas )  
Company to Implement an Experimental Low-income ) Case No. GT-2003-0117  
Assistance Program Called Catch-Up/Keep-Up. ) Tariff No. JG-2003-0396

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**REPORT AND ORDER**

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**Issue Date:** January 16, 2003

**Effective Date:** January 26, 2003

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

In the Matter of the Tariff Filing of Laclede Gas )  
Company to Implement an Experimental Low-income ) **Case No. GT-2003-0117**  
Assistance Program Called Catch-Up/Keep-Up. ) **Tariff No. JG-2003-0396**

**APPEARANCES**

**Michael C. Pendergast**, Vice President and Associate General Counsel, and **Rick Zucker**, Assistant General Counsel – Regulatory, Laclede Gas Company, 720 Olive Street, Room 1520, St. Louis, Missouri 63101, for Laclede Gas Company.

**James C. Swearingen**, Brydon, Swearingen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, for Laclede Gas Company.

**Ronald Molteni**, Assistant Attorney General, Office of the Attorney General, Post Office Box 899, Jefferson City, Missouri 65102, for the Missouri Department of Natural Resources.

**John B. Coffman**, Acting Public Counsel, **Michael F. Dandino**, Senior Public Counsel, and **Douglas E. Micheel**, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

**Thomas R. Schwarz, Jr.**, Deputy General Counsel, **Lera L. Shemwell**, Associate General Counsel, and **David A. Meyer**, Associate General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

**REGULATORY LAW JUDGE:** Vicky Ruth, Senior Regulatory Law Judge.

**REPORT AND ORDER**

**Syllabus**

Laclede Gas Company filed a proposed tariff to implement an arrearage forgiveness program, called the "Catch-Up/Keep-Up Plan", for eligible, low-income

customers. While the concept of an arrearage forgiveness program is worthy of consideration, Laclede's proposal would unlawfully pass non-gas costs through the Purchased Gas Adjustment/Actual Cost Adjustment (PGA/ACA) mechanism. The Program is also longer in duration and larger in size than is reasonable based upon the evidence presented. Although Laclede would profit and some low-income customers would receive short-term help, most customers would suffer a rate increase and be denied a corresponding rate offset related to reductions in uncollectible expense and other costs until the current rate case moratorium ends. For these reasons, the Commission concludes that the proposed tariff should be rejected due to its flawed design and improper funding mechanism.

### **Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

#### **Procedural History:**

Laclede originally filed its tariff setting forth its initial proposal of an incentive program on July 29, 2002, as a separate filing during the prehearing settlement conference meetings in Laclede's rate case proceeding, Case No. GR-2002-356. Laclede's tariff sheets were designed to increase the Company's rates by \$6 million and to implement an

arrearage forgiveness program. As initially filed, the Program was to be funded with 30% of the discounts obtained by Laclede from the maximum tariff rates that the Federal Energy Regulatory Commission allows pipelines to charge for transportation and storage services. Two-thirds, or 20%, of the discounts were to be used to reduce the arrearages of low-income customers who make three timely payments of their current monthly levelized bills. The remaining third, or 10% of the discounts, was to be retained by Laclede as an indirect incentive to maximize the discounts.

On August 21, 2002, Staff filed a motion requesting that the Commission suspend and reject the proposed tariff. Staff raised a number of issues in support of its motion. Laclede withdrew the tariff on September 18, 2002, and filed a new tariff on September 23, 2002, that revised the Program. It is that September 23 tariff filing which initiated this case. The tariff originally bore an effective date of October 24, 2002.

On October 1, 2002, Staff filed a motion to suspend the proposed tariff, or in the alternative, to reject the tariff. The Office of the Public Counsel also filed a Motion to Suspend. The motions alleged, among other things, that the Program should be implemented only on an experimental basis with limited parameters so the Program could be studied and a determination could be made as to whether the purported benefits actually materialize. On October 8, 2002, Laclede filed its response in opposition to the motions to suspend.

On October 10, 2002, the Commission issued its Order that suspended the tariff until November 21, 2002, and scheduled a Prehearing Conference. On October 25, 2002, Staff filed its request to determine whether the Commission wished to schedule a public hearing. A prehearing conference was held on October 29, 2002. On October 31, 2002,

Laclede filed a motion in opposition to holding local public hearings. On November 7, 2002, the Commission issued its Order scheduling a local public hearing in downtown St. Louis, Missouri. The local public hearing was held as scheduled on November 18, 2002.

On November 1, 2002, Laclede filed its procedural recommendations. On the same date, Staff and Public Counsel also filed a joint recommendation for a procedural schedule. On November 6, 2002, the Missouri Department of Natural Resources (DNR) filed an application to intervene. On November 18, 2002, Staff filed a motion in support of DNR's application to intervene, noting that DNR was named in Laclede's tariff. The Commission granted DNR's application on December 2, 2002.

On November 8, 2002, the Commission issued its Order Adopting Procedural Schedule and Expediting Transcript. In order to accommodate the procedural schedule, the Commission issued an order on November 18, 2002, further suspending the tariff until January 21, 2003. The parties filed direct testimony on November 19, 2002. The parties filed the order of witnesses and order of cross-examination on November 21, 2002. The evidentiary hearing was held on December 2-5, 2002. During the hearing on December 3, 2002, Laclede distributed, but did not file, specimen tariff sheets that contained several changes that Laclede agreed to make to its Program.

DNR filed its brief on December 13, 2002, and its proposed Findings of Fact and Conclusions of Law on December 16, 2002. Laclede, Staff and Public Counsel filed their briefs and proposed Findings of Fact and Conclusions of Law on December 16, 2002. Staff filed an amended version of its Findings of Fact and Conclusions of Law on December 18, 2002.

**Tariff:**

As noted above, Laclede filed proposed tariff sheets to implement an arrearage forgiveness program called the "Catch-Up/Keep-Up Plan", for eligible, low-income customers. The tariff would increase customers' costs for transportation of natural gas by \$6 million by diverting up to that amount from the transportation discounts that would otherwise be returned to Laclede's customers. These diverted moneys would be placed in an escrow account to fund an arrearage forgiveness program. Currently, 100% of any pipeline discounts received by Laclede are flowed through to all non-transportation customers. Under Laclede's proposal, only 70% of the pipeline discounts would be flowed through to Laclede customers. The other 30% would be placed in an escrow account and used to reduce the arrearages of Laclede's low-income customers. As arrearages are forgiven, funds would flow from the escrow account into Laclede's accounts receivables.

Laclede proposes to require no payment of arrearages for qualifying customers. Instead, Laclede proposes to require the general body of all ratepayers to pay one-fourth or \$375, whichever is less, of each Program participant's arrearages for every three consecutive level-bill payments a Program participant makes.

**Issues:**

**I. Is there a need for a Program similar to the one proposed by Laclede?**

There was little dispute among the parties regarding the need for additional energy assistance for the Company's low-income customers. The parties disagree as to whether Laclede's plan should be approved. The Commission agrees that there is a need for additional energy assistance for low-income customers. Whether Laclede's Catch-Up/Keep-Up Program is appropriate will be addressed below.

**II. If there is a need for additional energy assistance for the Company's low-income customers, is this Program properly designed to address that need?**

**A. General Design Issues**

A properly designed low-income assistance program should benefit all stakeholders by promoting conservation and by assisting low-income consumers in reducing their energy burden. The low-income customers may then be able to pay their utility bills, thereby reducing utility costs for all ratepayers.

The Commission finds that there are numerous problems with the design of the Program. Laclede's arrearage Program is not properly designed to address the low-income consumer needs for rate affordability and usage assistance. The success of the Program is dependent on the modification of the behavior of the low-income customer. The expectation that low-income customers in the Program will become better able to pay their bills may be unrealistic. As noted by Staff, this Program has no track record. Laclede's proposal does not provide any means to assist participants with payment of current gas bills, although eligible customers must apply for assistance from available sources.

The Program requires no payment of arrearages from qualifying customers, but does require the general body of all customers to pay up to \$375 of each Program participant's arrearages every three months for each program participant that makes three consecutive level-bill payments. Third-party community action programs (CAP agencies) would determine if Program customers face "extenuating circumstances" that would either excuse the three consecutive payment requirement or allow a defaulting customer to reenter the Program. Laclede did not define what constitutes an extenuating circumstance and did not place any limitations on the CAP agencies' exercise of this broad discretion. Regularly granting waivers for extenuating circumstances could mean that low-income

customers would receive arrearage forgiveness without ever developing regular payment habits, which is a stated Program goal.

The Program would increase rates because Laclede proposes funding this program through a surcharge in the PGA/ACA process that is the equivalent of raising the customer charge by between \$0.62 and \$1.00 per month. Since the Program raises rates for all customers by \$6 million, it could harm those customers who just barely manage to pay their bills, but have not yet fallen into an arrearage situation.

The tariff's lack of a provision for comprehensive evaluation of the Program is another flaw. Although Laclede agreed at the hearing to collect additional data, if available, that is only sufficient if Laclede actually makes reasonable efforts to collect the data. Other flaws include the lack of quantified administrative costs of the Program; the lack of estimates of the Program's success or failure, including the number of customers that would participate and the affect the Program would have on write-offs; and the lack of estimates regarding the benefits that Laclede would realize as a result of the Program.

Although the Program is not well-designed to meet the needs of low-income customers, it is likely to have a positive impact on the Company's financial condition by improving cash flow and replacing income lost when the Commission denied Laclede's request to extend its Gas Supply Incentive Plan (GSIP).<sup>1</sup> The Program allows Laclede to divert a portion of the pipeline discounts that would otherwise be passed on to all ratepayers, and to then use those discounts to reduce the company's bad-debt expense. Thus, Laclede would receive a double recovery because bad-debt expense is already

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<sup>1</sup> *In the Matter of Laclede Gas Company's Tariff Filing to Implement an Experimental Fixed Price Plan and Other Modifications to Its Gas Supply Incentive Plan*, Case No. GT-2001-329.



included in permanent rates. The Program also permits Laclede to delay write-offs to a subsequent period. Customers who would otherwise have been written off because they were unable to make the necessary payment to come on-line under the Cold Weather Rule provisions<sup>2</sup> will have the "payment" made for them through the arrearages Program. By reactivating the Program participant's account, Laclede would also delay making any further write-offs on that account.

**B. Does the Program have the potential to benefit or harm customers?**

**1. All customers:**

The Commission finds that the Program is likely to harm all customers. The Program requires all customers to pay higher rates than those approved by the Commission in the settlement of the Company's last rate case because the \$6 million Laclede proposes to use to fund the Program would otherwise be used to offset the transportation cost of gas and reduce the amount all Laclede customers would pay on a per-unit basis. In addition, the Commission finds that the moneys being charged to customers exceed any expectation of the cost of the Program. Any excess funds cannot be returned to consumers before the Program is terminated. Thus, the excess charges will accumulate as long as the Program remains in existence.

All customers will also be harmed by the fact that they will be required to fund, in advance, bad debts that would normally be considered in future rate cases to the extent the bad debts actually materialize. All firm sales customers will be harmed to the extent that a portion of their prepaid bad-debt expense benefit will be allocated to firm transportation customers even though the firm transportation customers will not pay for the Program.

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<sup>2</sup> 4 CSR 240-13.055(7)(C).

In addition, all customers will be harmed if moneys raised from Dollar Help are reduced as a result of the Program. All customers will pay the increase to their cost of service as a result of the reduced collections from specific customers or outside agencies. If the Program participants cannot afford to keep current with their utility bills, the participants may eventually incur additional arrearages. This could result in a higher cost of service for all customers.

**2. Low-income customers:**

Low-income customers that can afford their gas bills, without the burden of payment of their arrearages, could receive short-term benefits from the Program by reducing their debt as payments are made for their arrearages from the escrow fund. Low-income customers that cannot afford to pay their current gas bills could benefit from the Program while they receive service. However, even with the payment of their arrearages, if these customers can't afford to continue to pay their gas bills, they can be disconnected for nonpayment during the three-month period. Consequently, these customers would then have even greater arrearage charges that they would need to satisfy to receive future service, or that would be paid by other customers through the recovery of bad debt expense. Furthermore, under the Program all customers, including low-income customers, would forego the benefit of pipeline discounts on their natural gas bills.

**C. Does the Program have the potential to benefit or harm Laclede?**

The Commission finds that under the Program, Laclede would likely experience higher reported earnings as a result of the double recovery, prepayment or deferred recognition of its bad debt expense. Laclede would also benefit to the extent that it has access to the excess funds accumulated by the Program that permit it to meet its other cash flow requirements, regulated or nonregulated, with funds otherwise used for bad debt.

Thus, Laclede would experience an increased cash flow and an increase in income that would flow directly to Laclede's bottom line and consequently to shareholders. Therefore, the Commission finds that Laclede and its shareholders would benefit from the Program.

### **III. Funding Issues**

#### **A. Is the Program's level of funding appropriate?**

Laclede argued that its proposed funding level of \$6 million is appropriate. Staff countered that based on other programs, an experimental program funded at \$600,000 would be more in line with previous experimental programs. Public Counsel stated that if the Commission desires to implement a version of the Catch-Up/Keep-Up Program, an arrearage reduction component should be set at \$2.588 million on an annual basis. The Commission finds that Laclede's proposed level of funding is excessive for this experimental, untested program.

The Commission notes that Laclede has done no studies nor even estimated the costs of the Program. Laclede's witness, John Moten, admitted that the \$6 million funding level was not directly tied to the funding needs of the Program, but that this level was based on the moneys that the Company previously received through the old Gas Supply Incentive Plan. That Gas Supply Incentive Plan expired on September 30, 2001, and as a result of the Commission's order in Case No. GT-2001-329, was not extended.

Furthermore, the \$6 million level is significantly higher than any other low-income program in Missouri. The cost to consumers would equate to increasing Laclede's customer charge by approximately \$0.62 - \$1.00 per month – for an untested program. In contrast, Missouri Gas Energy's (MGE) experimental program only costs customers about \$.08 per month. Moreover, the MGE program was designed as part of a stipulation and

agreement between the parties to a rate case, is funded through the customer charge, is of shorter duration, and includes parameters for a thorough evaluation of the program.<sup>3</sup>

The Commission agrees with Staff that the evidence presented is not sufficient to determine several issues, including: 1) if the proposed funding level is not appropriate, what funding level is appropriate; 2) whether the Company's customers with the lowest incomes will actually be able to take advantage of the Program, or whether another approach might be necessary; 3) whether the program will reduce Laclede's costs so that all customers benefit as Laclede has suggested; and 4) whether the Program might actually exacerbate problems for low-income customers, resulting in additional arrearages.

**B. How can the Program be funded? How should the Program be funded?**

Laclede believes that the Program can and must be funded through the use of 30% of the pipeline discount savings achieved by the Company. Staff argues that the Program should be funded by means of an Accounting Authority Order (AAO). Public Counsel contends that a rate case would have been the appropriate place to address such a program.

Laclede's proposal uses the PGA/ACA process as a funding mechanism. The PGA/ACA process has been held to be lawful because the types of costs that are included are limited in nature to the cost of obtaining the gas itself, and because the Commission through its audit and adjustment process considers all relevant factors. The PGA/ACA process may not include margin costs; in other words, the costs of doing business, such as

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<sup>3</sup> See *In the Matter of Missouri Gas Energy's Tariff Filing for a General Rate Increase*, Case No. GR-2001-292.

labor or materials costs. Bad debt expenses fall within the category of the costs of doing business.

The Commission is unwilling to adopt a policy that allows the collection of bad debt through the ACA process. PGA costs are limited to recovery of natural gas costs necessary to bring the commodity from the production areas to the Company's city gate. City-gate delivered costs include the cost of the commodity itself, interstate pipeline transportation charges, and interstate storage charges, all of which are subject to a later prudence review. Margin costs such as payroll, depreciation, customers service, bill collection and bad debt expenses are considered in the context of a general rate case and not subject to an adjustment process. Laclede's Program proposes to include margin costs in the ACA/PGA process. Such a use of the PGA/ACA mechanism is unlawful and could be the downfall of this process.

The Commission determines that Laclede's funding method for the Program is unlawful and that the tariff must be rejected. The Commission notes that a rate case would have been an appropriate place to consider the Program. Evaluating the Program in the context of a rate case would permit the Commission to consider all factors to determine the amount to include in rates, and would provide the Commission the flexibility to explore and implement several options. The rate case approach protects consumers from overcharges for bad debt expense as the amount of bad debt expense included in rates (e.g., \$8 million in Laclede's last rate case) is matched with the costs. The rate case approach avoids the initial overcharges to consumers of up to \$6 million as contained in Laclede's Program. The Commission has unanswered questions and concerns regarding whether the AAO

would have been an appropriate funding method, as advocated by Staff. However, that is a question the Commission need not answer at this time.

#### IV. Other:

As noted above, the Commission finds that the proposed tariff must be rejected due to its flawed design and improper funding methods. There are no other issues that require Commission determination at this time.<sup>4</sup> However, the Commission determines that the concept of an arrearage forgiveness program is worthy of further review. The Commission hereby encourages the parties to establish a collaborative to meet and attempt to develop a possible alternative to the Catch-Up/Keep-Up Plan.

### Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Laclede Gas Company is a gas corporation as defined under Section 386.020(18), RSMo 2000. Laclede is an investor-owned public utility engaged in the provision of natural gas service in the state of Missouri and therefore is subject to the jurisdiction of the Missouri Public Service Commission under Chapters 386 and 393, RSMo 2002.

The Commission is an agency of limited jurisdiction and may only act in accord with its statutory mandate. *State ex rel. Kansas City Power & Light Co. v. Buzard*, 350 Mo. 763, 168 S.W.2d 1044, 1046 (Banc 1943).

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<sup>4</sup> The Commission appreciates the suggestions made by the Department of Natural Resources regarding ways to improve the weatherization aspects of Laclede's proposed Catch-Up/Keep-Up Plan. However, since the Commission is rejecting the tariff, a discussion of those issues is not necessary.

The Commission is prevented from engaging in single-issue ratemaking as well as retroactive ratemaking. *State ex rel. Midwest Gas Users' Ass'n v. Public Serv. Com'n.*, 976 S.W.2d 470 (Mo. App. W.D. 1998).

The Commission is also required to consider all relevant factors when setting rates. *State ex rel. Val. Sewage Co. v. Public Serv. Com'n.*, 515 S.W.2d 845 (Mo. App. 1974).

The Commission has determined that it may not include non-gas costs in the ACA/PGA process for a number of reasons. *State ex rel. Midwest Gas Users' Ass'n v. Public Serv. Com'n.*, 976 S.W.2d 470 (Mo. App. W.D. 1998). The PGA/ACA process has been determined to be lawful because it is limited to a specific type of cost – the cost of gas. The Court has said that in determining to allow a PGA mechanism, the Commission is necessarily determining that “due to the unique nature of gas fuel costs, including the fact that natural gas is a natural resource, not a product which must be produced with labor or materials, the fuel cost component of the rate may be treated differently. *State ex rel. Midwest Gas Users' Ass'n. v. Public Ser. Comm'n.*, 976 S.W.2d 470, 480 (Mo. App. W.D. 1998). In approving the PGA the Commission created a mechanism that allows fuel costs to be passed along and fuel cost reductions to be passed along in the amount incurred. *Id.*

Laclede proposes to include bad debt recovery in this process. Uncollectible expenses do not meet the criteria established by the Court as a separate, discrete cost that may be considered outside a rate case. Bad debt is a cost of doing business and is a margin cost, not a commodity cost, and must be considered in the context of a rate case where all costs and reductions in costs may be considered.

Approval of the Program as proposed would constitute single-issue ratemaking. *State ex rel. Midwest Gas Users' Ass'n. v. Public Ser. Comm'n.*, 976 S.W.2d 470, 480 (Mo. App. W.D. 1998). The Court has found gas supply incentive plans to be lawful only because the Commission determines ahead of time a benchmark price for gas that is representative of the cost of gas over a year. An actual cost adjustment is made periodically. (Sommerer Direct, Exh. 10, p. 3). The Court found this process to be lawful only because the Commission has set targets for gas prices and determined ahead of time what it will consider to be prudent and what it will consider to be imprudent. *Id.* It is only these prior determinations that allow this process to be considered lawful. *Id.*

Laclede's tariff does not include any benchmarks or information that would permit the Commission to make these prior determinations so that the Program could be funded with savings from an incentive plan. This is a significant defect that prevents the Commission from approving the funding mechanism proposed by Laclede in this tariff. *State ex rel. Midwest Gas Users' Ass'n. v. Public Ser. Comm'n.*, 976 S.W.2d 470, 480 (Mo. App. W.D. 1998).

Furthermore, the Commission acknowledges that there is the issue of whether the law permits a utility to charge, directly or indirectly, customers within the same class a different rate for the same service.<sup>5</sup> As the Commission is rejecting the tariff on other grounds, it need not address this question. The Commission is also mindful that legislation has recently been introduced that would address this issue.<sup>6</sup>

The Commission appreciates the plight of low-income ratepayers and has previously authorized, and continues to support, a variety of other low-income support

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<sup>5</sup> Section 393.130.2, RSMo 2000.



projects. The Commission has authorized an experimental pilot program for MGE that is similar to Laclede's proposal. That program, however, was implemented in the confines of

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<sup>6</sup> Senate Bill 127.

a rate case where the Commission explored all relevant factors. Prudent public policy dictates that the Commission should await the results of that pilot program before committing the amount of resources that Laclede requests.

The tariff as filed must be rejected because of its serious deficiencies. In addition, the Commission notes that the proposed tariff bears an effective date of January 21, just a few days following the issuance of this order. Therefore, the Commission will briefly suspend the tariff in order to allow a longer period between the issuance of this order and the effective date of the tariff.

**IT IS THEREFORE ORDERED:**

1. That effective January 16, 2003, the proposed tariff (tariff file no. JG-2003-0396) filed by Laclede Gas Company on September 23, 2002, is suspended for a period of six days, from January 21, 2003, to January 27, 2003.
2. That the proposed tariff (tariff file no. JG-2003-0396) filed by Laclede Gas Company on September 23, 2002, is rejected.
3. That all motions not previously ruled upon by the Commission in this case are hereby denied.

4. That this except for Ordered Paragraph No. 1, this Report and Order shall become effective on January 26, 2003.

**BY THE COMMISSION**

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Lumpe, Gaw, and Forbis, CC., concur;  
Simmons, Ch., dissents;  
Murray, C., dissents, with dissenting  
opinion attached;  
certify compliance with the provisions of  
Section 536.080, RSMo.

Dated at Jefferson City, Missouri,  
on this 16th day of January, 2003.

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BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Stipulation & Agreement Hearing

September 26, 2005  
Jefferson City, Missouri  
Volume 7

In the Matter of Laclede Gas        )  
Company's Tariff to Revise        ) Case No.  
Natural Gas Rate Schedules        ) GR-2005-0284

NANCY M. DIPPELL, presiding,  
Senior Regulatory Law Judge  
JEFF DAVIS, Chairman,  
CONNIE MURRAY,  
STEVE GAW,  
ROBERT M. CLAYTON, III,  
LINWARD "LIN" APPLING,  
Commissioners.

REPORTED BY:  
Jennifer L. Leibach, RPR, CCR(T)  
MIDWEST LITIGATION SERVICES

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FOR: Office of the Public Counsel and  
the Public

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A P P E A R A N C E S (con't)

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PROCEEDINGS

JUDGE DIPPELL: Good morning. This is Case No. GR-2005-0284 in the matter of Laclede Gas Company's Tariff to Revise Natural Gas Rate Schedules. My name is Nancy Dippell. I'm the Regulatory Law Judge assigned to this matter, and we've come here today for a hearing regarding the stipulation and agreement filed by the parties, or most of the parties. There has been no objection to that stipulation. And we're going to begin with entries of appearance. Can we begin with Staff?

MR. MEYER: Good morning. David Meyer, Tim Schwarz, Keith Krueger, Robert Franson, Lera Shemwell and Bob Berlin for the Staff of the Missouri Public Service Commission. Our address is PO Box 360, Jefferson City, Missouri, 65102.

JUDGE DIPPELL: Okay. Mr. Meyer, I see Mr. Krueger in the room. The others are attorneys who have entered -- I'm sorry, I see Mr. Franson in the room, too. The others are -- entered their appearance on various matters, but aren't actually present at this point. I just want to clarify that for the record.

MR. MEYER: That's correct; however, some, depending on necessity, may appear as we proceed.

JUDGE DIPPELL: Thank you. Mr. Dandino.

1 MR. DANDINO: Michael Dandino, Office of the  
2 Public Counsel, Post Office Box 2230, Jefferson City,  
3 Missouri, 65102, representing the Office of Public Counsel  
4 and the public.

5 JUDGE DIPPELL: Laclede?

6 MR. ZUCKER: Thank you, your Honor. Michael  
7 C. Pendergast and Rick Zucker on behalf of Laclede Gas  
8 Company. Our business address is 720 Olive Street,  
9 St. Louis, Missouri, 63101.

10 JUDGE DIPPELL: All right. Ms. Schroder?

11 MS. SCHRODER: Sherrie Schroder for --  
12 from --

13 JUDGE DIPPELL: Could you -- is your  
14 microphone on? Yeah, it's probably -- okay. Sorry.

15 MS. SCHRODER: Sherrie D. Schroder, 7730  
16 Carondelet, Suite 200, St. Louis, Missouri, 63105. And Julia  
17 Englehardt from the same firm has been involved in prior  
18 hearings on this matter but is not present today. And we're  
19 representing PACE 5-6, the Paper Allied Industrial Chemical  
20 and Energy Workers.

21 JUDGE DIPPELL: Thank you.

22 MR. SCHAEFER: For the Department of Natural  
23 Resources, Kurt Schaefer, and my address is PO Box 176  
24 Jefferson City, Missouri, 65102.

25 JUDGE DIPPELL: And are there any other



1 parties present? I did have a phone call this morning from  
2 Diana Vuylsteke for the Missouri Industrial Energy Consumers;  
3 is that correct? And she said that she was running just a  
4 little bit late, and asked to enter her appearance when she  
5 arrives.

6                   And I also have had conversations with the  
7 attorney for MEG, and indicated that it was not -- there were  
8 not Commission questions for MEG. I told her that if she was  
9 not present, that her party, of course, would waive any  
10 rights to any objections to any of the matters that went on  
11 here today, but I'm not expecting counsel for MEG.

12                   Okay. We premarked exhibits. We premarked  
13 the stipulation of the parties as Exhibit 1, Laclede's direct  
14 testimony as Exhibit 2, and the Staff's supporting affidavits  
15 as Exhibit 3. Would there be any objection to Exhibit 1  
16 being admitted into the record?

17                   MR. DANDINO: No objection.

18                   JUDGE DIPPELL: Seeing none, I will admit it.  
19 Would there be any objection to Exhibit 2, Laclede's direct  
20 testimony being admitted into the record?

21                   MR. DANDINO: No objection, your Honor.

22                   JUDGE DIPPELL: Seeing no objection, I will  
23 admit Exhibit 2. Would there be any objection to Exhibit 3  
24 being admitted into the record? Seeing no objection, I will  
25 admit Staff affidavits as Exhibit 3.

1                   We didn't talk about the order of things  
2 before we got started. Would the attorneys like to make any  
3 opening statements? Mr. Pendergast?

4                   MR. PENDERGAST: We'd be happy to, but if the  
5 Commission would rather just go directly to questions and  
6 answers, that's fine, too.

7                   JUDGE DIPPELL: Mr. Meyer, same?

8                   MR. MEYER: I have one prepared if you'd like  
9 to hear it, otherwise we can just accept questions.

10                  JUDGE DIPPELL: All right. Mr. Dandino, did  
11 you need to make any opening remarks?

12                  MR. DANDINO: Whatever is the Commission's  
13 pleasure.

14                  JUDGE DIPPELL: Let me just look at the  
15 Commissioners and see. Is the Commission --

16                  COMMISSIONER MURRAY: If someone has a  
17 prepared statement, I'd like to hear it.

18                  JUDGE DIPPELL: Okay. Let's begin with  
19 Mr. Meyer, then.

20                  MR. MEYER: Good morning, may it please the  
21 Commission. The Staff, the Public Counsel, and Laclede, as  
22 well as the other parties in this case have negotiated for  
23 months and have reached a settlement of the issues in this  
24 case including the revenue requirement and the class cost of  
25 service. The stipulation is essentially an overall

1 settlement package.

2                   Staff is comfortable with recommending the  
3 settlement to the Commission as a reasonable resolution of  
4 the issues in this case for both the Company and consumer.  
5 We're looking at a \$10.5 million increase in base rates;  
6 however, 6.1 million of that are already being collected  
7 through the ISRS function, so only 4.4 million is actually  
8 new to consumers. The PGA is also part of this  
9 settlement, will go up 4.1 million to allow the Company to  
10 recover the carrying cost of gas placed in storage. That's  
11 4.4 plus 4.1 from the base rate change, which is the  
12 discussed figure of 8.5 million, the net increase relative to  
13 today.

14                   The stipulation contains several proposals  
15 that will be implemented subject to the Commission's  
16 Chapter 13 rulemaking, including customer deposit and cutoff  
17 hour provisions that will be implemented through tariff  
18 changes. The implementation of these new provisions should  
19 provide some insight as the rulemaking process continues, but  
20 will be adjusted to comply with the Commission's ultimate  
21 decision in the rulemaking proceedings.

22                   The representatives at the public hearing  
23 asked whether Laclede will have incentives to purchase gas in  
24 a manner to protect the customers from unnecessary cost  
25 increases. The parties have agreed to revisions in the

1 Experimental Gas Supply Incentive Program that Staff  
2 anticipates will encourage the Company to obtain gas at the  
3 lowest feasible rates.

4                   The existing plan is being modified in several  
5 ways to take into account the current market reality, which  
6 will encourage the Company to obtain gas at the lowest  
7 possible rate because it will be able to share the savings  
8 along to the consumers. The program provides for the  
9 customer, and prudence reviews the Commission relies on to  
10 ensure that the process is conducted in a proper manner and  
11 to protect the ratepayers.

12                   The parties have also agreed to implementing a  
13 low income program, which entails an increase in the funds  
14 available for programs and will be jointly administered by  
15 community staff and agencies and the company. Staff  
16 participated extensively in the negotiations leading to this  
17 proposal, negotiations that went up to virtually the day the  
18 stipulation and agreement was completed and filed, and  
19 supports the provisions which we believe strike a reasonable  
20 balance between customer responsibility and consumer  
21 assistance.

22                   During the public hearings, you heard some  
23 discussion of automatic meter readers. Anything related to  
24 that issue, quite simply, from Staff's perspective, is  
25 outside the scope of this case. Rate-making is a

1 retrospective process to create prospective rates. Nothing  
2 has taken place, to the best of Staff's knowledge, during the  
3 test year and through the order true-up date to result in  
4 decreased wage expenses, and this settlement does not  
5 implement any meter reading position's elimination.

6           Such an event would be reflected in The  
7 Company's next rate case, a side effect of the regulatory lag  
8 phenomenon where the Company bears the expenses as well as  
9 the benefits of changes in its income until the next time the  
10 Commission considers all relevant factors to reset a rate.  
11 Likewise, the Company's existing bonus plan was implemented  
12 after the last rate case and is not reflected in the existing  
13 rates, and the stipulation provides that no bonuses will be  
14 paid out of rates collected under the stipulation provisions  
15 setting new rates.

16           The parties would certainly be happy to  
17 discuss this or any other questions you may have further with  
18 you, if you wish. Staff supports the stipulations in this  
19 case as a reasonable settlement for Laclede and its  
20 customers. Although any rate increase will certainly be a  
21 hardship on some customers, the amount of the increase has  
22 been greatly minimized while allowing the Company to recover  
23 its reasonable cost to provide service.

24           There are low income and efficiency programs  
25 to help reduce customer's bills. The stipulation provides

1 incentives for the Company to purchase the cheapest gas. It  
2 maintains the current rate structure, it does not increase  
3 the residential customer charge. For all of these reasons,  
4 the Staff asks that the Commission approve this settlement.  
5 We have witnesses available to discuss these points with you  
6 further, or answer any questions you may have. Thank you.

7 JUDGE DIPPELL: Thank you, Mr. Meyer. Are  
8 there any questions specifically for Mr. Meyer at this point?  
9 I don't see any. Thank you, Mr. Meyer. Mr. Pendergast, did  
10 you want to make any additional remarks?

11 MR. PENDERGAST: Just a few. May it please  
12 the Commission. I think Mr. Meyer did an excellent job of  
13 summing up the major provisions of the stipulation agreement,  
14 and I will try and not be redundant. I'd just like to make a  
15 few observations.

16 Number one, I think as you recognized  
17 yourself, your Honor, although the stipulation agreement was  
18 not initially signed by all of the parties, it did include a  
19 provision indicating that all of the parties had had an  
20 opportunity to review its contents and nobody had objected to  
21 it. Consistent with that representation in the stipulation  
22 agreement, no one has objected to it in the seven days  
23 provided under the Commission's rules for objections to  
24 stipulations and agreements. And pursuant to those same  
25 rules, the stipulation and agreement can, and we believe

1 should be, treated as a unanimous stipulation and agreement  
2 resolving all issues in this case.

3                   Laclede believes that the stipulation and  
4 agreement represents a demonstrably fair and reasonable  
5 resolution of the issues raised in this case, as one would  
6 expect from a document that reflects the input, viewpoints,  
7 and positions of such a divergent and wide range of parties.  
8 As Mr. Meyer indicated, it recommends an overall increase in  
9 new charges of \$8.5 million, which for the typical  
10 residential customer would mean an increase in the overall  
11 bill of approximately one percent, or about a dollar five per  
12 month. We believe that's an extraordinarily good result for  
13 our customers, and I think that's even clearer when you put  
14 those numbers in perspective.

15                   As the affidavits submitted by the Staff in  
16 this case show, it's been nearly three years since Laclede  
17 last received an overall increase in its rates that we charge  
18 to cover the cost of installing, maintaining, and operating  
19 the 15,000 miles of pipe that we use to deliver gas to our  
20 customers. During that period of time, we've made net  
21 investments of over \$90 million in our utility operations.  
22 We had operating expense increases of approximately \$16  
23 million.

24                   Over that same period, we've also worked very  
25 hard to try and hold off on seeking rate relief by reducing

1 and maintaining costs, and that's been responsible for us  
2 being able to defer seeking rate relief for a year longer  
3 than has been our historical practice over the last several  
4 decades. And it's also, in part, responsible for what we  
5 believe is a very modest increase that we were able to agree  
6 to in this case.

7                   And although we believe that an increase of  
8 less than a nickel a day is pretty modest, we also understand  
9 that there are some customers who have a difficult time  
10 paying their bills regardless of what those utility charges  
11 are. That's why Laclede proposed from the onset, and worked  
12 hard with all the parties, and all the parties worked hard as  
13 well, to develop a low income program that hopefully  
14 reflected some of the lessons that we've learned from other  
15 low income programs that have been approved by the Commission  
16 for other utilities, to assist our most vulnerable customers  
17 with help with their utility bills. And it provides that  
18 assistance through a series of credits and matching  
19 contributions for customers who make an effort to pay off the  
20 arrearages that they owe the utility.

21                   At the same time, we are equally concerned,  
22 and I believe all the other parties were equally concerned,  
23 that there would be benefits of this program for customers  
24 who weren't eligible to participate. That's why the low  
25 income program that has been proposed by the party requires



1 that customers take self-help measures in order to try and  
2 conserve, if those measures are cost free, that they make  
3 timely payments under the program, and that they make  
4 consistent progress towards paying off their arrearage in  
5 order to be eligible, and to remain eligible to participate  
6 in the program.

7                   By doing so, it's our hope and our expectation  
8 that that will have a positive impact on the level of bad  
9 debts that the Company incurs, and that other customers must  
10 ultimately pay as a cost of doing business, and in fact, I  
11 think it's fair to say that the settlement already reflects a  
12 part of that benefit through a reduction in the level of bad  
13 debts. It's been recognized in the overall settlement. So I  
14 think there are benefits for everybody associated with this  
15 low income program.

16                   We've also -- and Laclede has agreed to  
17 contribute \$1 million on an annual basis to fund that  
18 program. Laclede's also agreed to contribute another  
19 \$300,000 for new energy efficiency programs that will help  
20 customers install high efficient energy appliances, and take  
21 other measures that will help them to go ahead and conserve  
22 on their bills, conserve on the cost that they have to pay  
23 for utility service, particularly the costs associated with  
24 the largest item on the customers' bills, and that's the cost  
25 we incur in connection with paying for wholesale gas

1 supplies, which of course have increased significantly in  
2 price over the past year.

3                   There are also other provisions in the  
4 stipulation and agreement that we believe will benefit our  
5 customers. Mr. Meyer's already mentioned the changes that  
6 have been made to the Gas Supply Incentive Plan. We've got a  
7 new provision relating to use of credit scoring for purposes  
8 of assessing deposits on customers. We still have to work  
9 out the details on that. We will be doing that with the  
10 Staff and Public Counsel and other interested parties, but  
11 it's basically designed to ensure that we only collect  
12 deposits when there's a need to collect the deposits. But  
13 when there is the need, we do, so that we have some  
14 protection from our other customers who do pay their bills on  
15 time and in full from those who do not.

16                   Another would expand the hours during which  
17 the Company personnel would be available to take bill  
18 payments from customers facing disconnection, so that  
19 hopefully we can avoid interruptions in service. There are a  
20 number of changes to the PGA. As you may know, Laclede has  
21 four scheduled PGAs that it makes on a routine basis every  
22 year. We have agreed to have one scheduled PGA change, and  
23 then three discretionary PGA changes, and then also start the  
24 tracking of underrecoveries and overrecoveries and the  
25 application of carrying costs from the first dollar. That

1 makes us consistent with what has generally been approved for  
2 other utilities in the state, and we were agreeable to make  
3 those changes.

4                   There are also other provisions in the  
5 stipulation and agreement that were important to the Company.  
6 One of them is the requested October 1st effective date that  
7 no party has objected to. That was an important element of  
8 the financial consideration underlying the stipulation and  
9 agreement. Another was preservation of our weather  
10 mitigation rate design, which we have indicated in our  
11 testimony is important to the Company and very important for  
12 purposes of removing the disincentives, that utilities  
13 otherwise had to pursue the kind of energy efficiency  
14 programs that I just mentioned.

15                   Implementation of the Commission's  
16 appreciation decision from GR-99-315, in which we have moved  
17 back to the historical treatment of net salvage cost as a  
18 part of depreciation, a result that should enhance the cash  
19 flow through available to the Company to fund its operations,  
20 as well as the inclusion of inventory costs in the PGA, a  
21 place where those inventory costs used to reside and be  
22 collected when LDCs, like Laclede, received primarily sales  
23 service from interstate pipelines.

24                   For all of these reasons, Laclede believes  
25 that the settlement is a good and a fair result for both our

1 customers as well as the shareholders who make the  
2 investments necessary to keep us operating. With that, we  
3 look forward to answering any questions you might have, and  
4 we appreciate your time and attention. Thank you.

5 JUDGE DIPPELL: Thank you, Mr. Pendergast.  
6 Are there any questions for Mr. Pendergast at this time, or  
7 shall I continue with opening statements?

8 COMMISSIONER MURRAY: Just one.  
9 Mr. Pendergast, the revenue requirement and the stipulation  
10 results in what percentage of rate increase -- total rate  
11 increase to the customers?

12 MR. PENDERGAST: For the typical residential  
13 customer, approximately one percent. I think if you refine  
14 those numbers down a little bit, it would be just a smidgen  
15 under one percent.

16 COMMISSIONER MURRAY: Thank you.

17 JUDGE DIPPELL: Are there any other questions  
18 for Mr. Pendergast at this time? All right. Thank you,  
19 Mr. Pendergast. Mr. Dandino? Ms. Vuylsteke, would you like  
20 to give your entry of appearance? I'm sorry, I saw you come  
21 in before Mr. Meyer spoke.

22 MS. VUYLSTEKE: Yes, Diana Vuylsteke for  
23 Missouri Industrial Energy Consumers, from the firm of Bryan  
24 Cave, 211 North Broadway, Suite 3600, St. Louis, Missouri,  
25 63102.

1 JUDGE DIPPELL: Thank you.

2 MR. DANDINO: Thank you, your Honor. May it  
3 please the Commission. Mr. Meyer, Mr. Pendergast has  
4 certainly explained the -- and outlined this stipulation and  
5 agreement, and I certainly don't have anything to add to  
6 their description of it.

7 I'm just wanting to be on the record as --  
8 that the Office of Public Counsel supports the stipulation  
9 and agreement, and asks the Commission to approve it. We  
10 support this because we do believe it is a just and  
11 reasonable settlement of the rate case litigation. In  
12 litigation -- in resolving litigation, you don't always get  
13 everything that you want, but I think we have to come to a  
14 reasonable middle ground, and we think this is certainly an  
15 effort that reduces the risk of increase to the ratepayer,  
16 and it has some excellent features in it that -- that  
17 Mr. Pendergast and Mr. Meyer have discussed.

18 One point that I would like to point out to  
19 you is that in the original proposal, Laclede wanted to  
20 increase the flat rate monthly customer charge that every  
21 customer gets for the residential by \$2 a month. It wanted  
22 to increase the one for small business' monthly charge by  
23 \$2.60 a month. Under the stipulation agreement, there will  
24 be no change in that -- in those two customer charges.

25 I think that is highly important, because the

1 Office of Public Counsel has always looked at the flat rate  
2 type charges as being detrimental to especially the low  
3 income people who have to pay the same amount as all other  
4 customers.

5 I think that I want to comment on some of the  
6 public comments we heard in the public hearings. And you  
7 couldn't sit through these public hearings without being  
8 moved by the stories that you heard from the customers saying  
9 they couldn't afford any increase, and some of the problems  
10 they had, but I think that this stipulation and agreement at  
11 least minimizes the increase, and also I think it provided an  
12 opportunity in future cases for you to look at some of the  
13 issues that they brought up in terms of the budget plan.

14 I think they had just some confusion -- or the  
15 Commission may want to look at the methodology and the  
16 communication involved with it, and the timing of adjustments  
17 in that, and also in the estimated bills and the method.  
18 That seemed to be the basis of many points of contention by  
19 the -- by the citizens at the public hearings. But I think  
20 in terms of -- of the overall settlement, I think it's very  
21 beneficial to the consumers, and we urge you to approve it.  
22 Thank you.

23 JUDGE DIPPELL: Thank you, Mr. Dandino. Are  
24 there any specific questions for Mr. Dandino at this time?  
25 Seeing none, thank you, Mr. Dandino.

1 MR. DANDINO: Thank you, your Honor.

2 JUDGE DIPPELL: Is there any opening remarks  
3 from DNR?

4 MR. SCHAEFER: Sure. Thank you, Judge. May  
5 it please the Commission. As the Commission knows, the  
6 Department of Natural Resources has intervened in this case,  
7 as it does in other rate cases similar to this, to ensure  
8 certain conservation measures to encourage energy efficiency  
9 and conservation, to hopefully encourage people to use less  
10 energy and to avoid possible rate increases in the future.

11 We've been part of the negotiation in this  
12 stipulation, and as you'll see at Page 12, Paragraph 14 of  
13 the stipulation, the provisions that the Department is  
14 interested in and has negotiated with to get into the  
15 stipulation would be the low income weatherization and  
16 efficiency rebate programs. And those are specified in more  
17 detail in attachment 5 to the stipulation.

18 The two programs -- there's a low income  
19 weatherization program, and a commitment of approximately  
20 \$500,000 annually, that's really a new commitment of \$200,000  
21 a year. There's already a commitment of \$300,000 a year, and  
22 appliances and HVAC rebate programs with \$300,000 a year.  
23 That program would encourage the use of energy star rated  
24 products, which would increase efficiency and use of natural  
25 gas. That's a commitment of about \$150,000 to residential,

1 \$100,000 to commercial for rebates, and another \$50,000 for  
2 rental property rebates.

3                   We believe these provisions, which were  
4 negotiated by the parties, are a benefit to the public, and  
5 we request that you approve these provisions. Generally,  
6 with reference to the rest of the provisions, the Department  
7 remains silent and our main concern are these provisions.

8                   And I do have a witness here today. I do not  
9 plan on presenting testimony, but if the Commission would  
10 like to hear from the witness, we're certainly available.

11                   JUDGE DIPPELL: Thank you, Mr. Schaefer. Are  
12 there any particular questions for Mr. Schaefer at this time?  
13 Okay. Thank you, Mr. Schaefer.

14                   MR. SCHAEFER: Thank you.

15                   JUDGE DIPPELL: Ms. Schroder, would you like  
16 to make any opening remarks.

17                   MS. SCHRODER: Certainly. May it please the  
18 Commission.

19                   PACE 5-6 did not sign the stipulation, but  
20 they did not and do not have any objection to it. As I  
21 understand it, I am here today to address some remarks that  
22 were made in a couple of the public hearings that were held  
23 in St. Louis by Joe Schulte, who is one of the  
24 representatives for PACE 5-6, pertaining to the automated  
25 meter reading process.



1                   We understand that the automated meter reading  
2 process is irrelevant to this case because this is  
3 retroactive rate-making. Mr. Schulte understood that, but he  
4 was appearing that day at the public hearings not only as a  
5 representative of PACE 5-6, but also as a consumer, and I  
6 believe that his statements pertaining to AMR were  
7 appropriate to raise public awareness about facts that may  
8 foreshadow a future tariff to decrease rates when the cost  
9 savings from these automatic meter reading savings are  
10 implemented. And also to address some safety concerns that  
11 he has arising from the same source of changes.

12                   But again, those -- those remarks have nothing  
13 to do with PACE 5-6's official position concerning the  
14 stipulation in this case. And we understand that the  
15 automated meter reading changes just are totally irrelevant  
16 to this particular rate-making. Thank you.

17                   JUDGE DIPPELL: Thank you, Ms. Schroder. Are  
18 there any questions for Ms. Schroder at this time? Okay.  
19 Thank you, Ms. Schroder.

20                   Ms. Vuylsteke, did you have any opening  
21 remarks?

22                   MS. VUYLSTEKE: Your Honor, we would prefer to  
23 waive opening statement, if that's acceptable to the  
24 Commission. We simply want to say that we support the  
25 stipulation and agreement, and I would be happy to answer any

1 questions that the Commission has.

2 JUDGE DIPPELL: Thank you. Are there any  
3 questions for Ms. Vuylsteke at this time?

4 All right. I believe that's everyone with  
5 opening statements, so at this time, I will ask if there are  
6 Commission questions about the stipulation, and which party  
7 those Commissioners would like to hear from. Commissioner  
8 Murray, did you have any?

9 COMMISSIONER MURRAY: I'm going to pass at the  
10 moment. Thank you.

11 JUDGE DIPPELL: Okay. Commissioner Gaw?

12 COMMISSIONER GAW: I have a number of  
13 questions, but I think I would prefer to say I'll pass to  
14 whoever has a few, and then if you want to come back to me.

15 JUDGE DIPPELL: All right. Commissioner  
16 Clayton, did you want to begin?

17 COMMISSIONER CLAYTON: Well, as much as it's  
18 tempting to pass like everyone else, I'll ask a few  
19 questions.

20 And I suppose just to get started, I'd like to  
21 focus questions to Staff just for some preliminary  
22 clarification on a number of provisions. And Judge, I don't  
23 know if it's acceptable if they can just answer from their  
24 desk. I may bounce around a little bit.

25 JUDGE DIPPELL: That's perfectly acceptable.

1 COMMISSIONER CLAYTON: Okay.

2 JUDGE DIPPELL: If everyone would please just  
3 answer into the microphone.

4 COMMISSIONER CLAYTON: Mr. Meyer, regarding  
5 the amount -- the dollar amount of the increase, there's been  
6 several references to the total amount of the increase being  
7 roughly \$10 million. Is that -- am I close to being correct?

8 MR. MEYER: The business rate increase is 10.5  
9 million, that is correct.

10 COMMISSIONER CLAYTON: That includes \$6.1  
11 million as part of an existing ISRS?

12 MR. MEYER: That's correct.

13 COMMISSIONER CLAYTON: Now, is it fair to  
14 assume that the increase has, in addition, another \$4  
15 million, which is a PGA adjustment?

16 MR. MEYER: That is also correct. The PGA  
17 adjusts about 4.1 million.

18 COMMISSIONER CLAYTON: Now, in the assessments  
19 that have been made -- or the statements that have been made  
20 in the press and a local public hearing about a dollar  
21 increase per month on average for a customer, is the PGA  
22 adjustment included in that dollar increase?

23 MR. MEYER: Yes, it is. It's -- for a  
24 residential customer, it's about a dollar.

25 COMMISSIONER CLAYTON: For a residential

1 customer. Thank you for clarifying that. But the actual  
2 increase, which is part base rates and part PGA adjustment,  
3 is \$14 million?

4 MR. MEYER: Are you -- I believe that's  
5 correct. That's the ten plus the four.

6 COMMISSIONER CLAYTON: That's my  
7 simplification of it. That's what I'm asking. And if it's  
8 not --

9 JUDGE DIPPELL: Mr. Pendergast, you look like  
10 you want to jump in.

11 COMMISSIONER CLAYTON: Please, go ahead. I  
12 just want to -- looking at this, we've had a lot of  
13 references to dollar amounts, and I want to make sure we're  
14 clear on where these dollar amounts come from.

15 MR. PENDERGAST: Basically, what you have is a  
16 \$10.5 million increase in base rates, of which 6.1 million is  
17 already being recovered throughout ISRS charge. Then, you  
18 have a removable \$4.1 million worth of costs from base rates  
19 to the PGA. And what we have done in deriving the \$8.5  
20 million is we have looked at the incremental increase in base  
21 rates above and beyond what was already being collected  
22 through the ISRS, added that to the 4.1 million that's moving  
23 over to the PGA, and we have derived the 8.5 million in new  
24 charges to customers that are already being collected.

25 And it's that 8.5 million that results in the

1 approximate one percent increase to the typical residential  
2 customer, or approximately a dollar five a month.

3 COMMISSIONER CLAYTON: Okay. So the \$1  
4 includes the PGA and the base rate increase?

5 MR. PENDERGAST: It does.

6 COMMISSIONER CLAYTON: Okay. I wanted to be  
7 clear on that if we had a \$1 increase, if there would be an  
8 additional increase for the PGA. Okay. Thank you for  
9 clarifying that, Mr. Pendergast.

10 Regarding of ISRS, which will be reset to zero  
11 under this -- and I suppose I'm going to come back to Staff  
12 just as a place to start, and feel free, anyone, to jump in.  
13 Regarding the ISRS that will be reset to zero, could you  
14 clarify for me when the next ISRS case could be filed under  
15 this agreement? Is there a moratorium or an agreement as to  
16 when the next case could be filed?

17 MR. MEYER: There is no moratorium as part of  
18 this agreement.

19 COMMISSIONER CLAYTON: Okay. So can you tell  
20 me when the next ISRS case could be filed? There's a  
21 reference to July 31st. I'm assuming there would have to be  
22 an accumulation of additional investment following July 31st.  
23 Mr. Pendergast, is that correct?

24 MR. PENDERGAST: That would be correct. I  
25 believe it's a million dollars worth of additional revenue

1 requirement before we would be eligible to file one.

2 COMMISSIONER CLAYTON: Okay. So it would  
3 require that additional investment following July 31st in  
4 that amount. Okay. Are there any agreements as to when the  
5 next rate case will be filed as part of this agreement?

6 MR. MEYER: No, there are not.

7 COMMISSIONER CLAYTON: And forgive me, since  
8 everybody so far has passed, I'm just kind of going through  
9 my discussions and taking my time. Sorry. I had several  
10 questions with regard to -- to the PGA adjustment, which is  
11 listed in Paragraph 3. And I was wondering if you could  
12 explain what is meant by an effort to, quote, reduce the  
13 complexity of the accounting underlying Laclede's existing  
14 PGA/ACA, close quote. What was changed in the PGA analysis  
15 as part of this agreement?

16 MR. MEYER: I think Staff would actually  
17 probably prefer to have a witness address that, if that's  
18 acceptable.

19 COMMISSIONER CLAYTON: Mr. Meyer, can you give  
20 me any idea what is meant in -- later on in that section --  
21 regarding accounting treatment of over- or under-recoveries  
22 of gas costs, including hedging costs? And if you don't  
23 know, just tell me you don't know, but do you know what the  
24 provisions of that language mean?

25 MR. MEYER: Again, I think we'd probably

1 rather have a witness address that.

2 COMMISSIONER CLAYTON: Okay. Well, Mr. Meyer,  
3 can you give me any information on the changes for FAS 87 or  
4 FAS 106?

5 MR. MEYER: Again, we'd have a witness to  
6 address that.

7 COMMISSIONER CLAYTON: Well, can you tell me  
8 whether the position taken in the stipulation is a position  
9 of Staff, or if it's the position of Laclede, or the position  
10 of Office of Public Counsel in the treatment of the pension  
11 plans and the postemployment benefits?

12 MR. MEYER: I believe it is our position, but  
13 again, we have an accounting witness who would be available  
14 to address that.

15 COMMISSIONER CLAYTON: All I'm asking right  
16 now is whose position was adopted in the stipulation. Okay.  
17 Are these different witnesses or a single witness that you're  
18 talking about?

19 MR. MEYER: The majority of it would be  
20 Mr. Rackers.

21 COMMISSIONER CLAYTON: Okay. Paragraph No. 7  
22 on depreciation, the position in the stipulation relates to a  
23 recent decision by the Commission regarding the treatment of  
24 net salvage and cost of removal. And I'm assuming that this  
25 provision is in Laclede's favor, according to that decision,

1 correct?

2 MR. MEYER: I believe that's correct.

3 COMMISSIONER CLAYTON: Can someone tell me the  
4 dollar amount value of that issue in this case?

5 Mr. Pendergast, do you know?

6 MR. PENDERGAST: Subject to check, I believe  
7 it's approximately \$6 million --

8 COMMISSIONER CLAYTON: Okay.

9 MR. PENDERGAST: -- along that basis.

10 COMMISSIONER CLAYTON: Mr. Pendergast,  
11 Paragraph 9 on Page 9 of the stipulation makes reference to  
12 "nothing herein shall be construed as prejudicing whatever  
13 rights the Company has upon conclusion of this case to pursue  
14 accounting authorizations or rate adjustment mechanisms to  
15 reflect increases or decreases in revenues resulting from  
16 changes in customer usage levels". I was wondering if you  
17 could tell me what -- what that provision relates to.

18 MR. PENDERGAST: We simply wanted to go ahead  
19 and maintain whatever rights we had, to either pursue an  
20 accounting authority order, if we deemed it necessary, to  
21 reflect changes we might have in environmental cost or  
22 usage-related reductions or increases, or to pursue  
23 implementation of any mechanisms that might be approved by  
24 the Commission in connection with Senate Bill 179. We  
25 recognize the parties may have different views as to who may



1 pursue those and under what circumstances. We just didn't  
2 want the stipulation and agreement to be deemed as precluding  
3 that.

4 COMMISSIONER CLAYTON: Okay. Thank you for  
5 that clarification. So Paragraph 9 could relate to an  
6 accounting authority order, or it could relate to one of the  
7 surcharges that were part of Senate Bill 179; is that  
8 correct?

9 MR. PENDERGAST: That's correct.

10 COMMISSIONER CLAYTON: So this paragraph says,  
11 the way it's read, is that nothing will prejudice what rights  
12 Laclede has under the Bill?

13 MR. PENDERGAST: Whatever they are.

14 COMMISSIONER CLAYTON: So is there any  
15 inclusion for any provision for any dollars -- any actual  
16 dollars, with regard to surcharges, or any type of expenses  
17 or costs that would be contemplated by those -- by Senate  
18 Bill 179?

19 MR. PENDERGAST: Not in this case.

20 COMMISSIONER CLAYTON: Okay. Do you know when  
21 the earliest that a surcharge under Senate Bill 179 could be  
22 enacted or applied for? Let's just say applied for,  
23 requested?

24 MR. PENDERGAST: My supposition would be that  
25 until rules are actually promulgated by the Commission, that

1 it would be difficult to do that. I know that there's a  
2 round table process, as you do as well, underway right now,  
3 in an effort with the input of all interested parties to  
4 develop potential rules. And I'm not really privy as to when  
5 that rulemaking proceeding may -- may culminate in actual  
6 rules. I think the expectation is sometime, perhaps, early  
7 next year.

8 COMMISSIONER CLAYTON: As part of Senate Bill  
9 179, how many surcharges actually related, or would be  
10 applicable to a gas distribution company?

11 MR. PENDERGAST: There's really only two. One  
12 is for environmental cost recovery, and the other is for  
13 customer usage. And of course, those are both items that can  
14 potentially go up or down.

15 COMMISSIONER CLAYTON: Okay. So potentially,  
16 if Laclede were to maximize its statutory authority, there  
17 could be three additional -- could be three additional  
18 surcharges at some point in the future; is that correct?

19 MR. PENDERGAST: Well, for Laclede, I believe  
20 it would be two; one would be the environmental, and the  
21 other would be the customer usage, and --

22 COMMISSIONER CLAYTON: Well -- and then the  
23 infrastructure replacement surcharge, I guess, is what I was  
24 referring to.

25 MR. PENDERGAST: Yeah, if you're referring to

1 that already being in existence, then there would be the  
2 possibility of three, and the customer usage being one.  
3 Obviously, since we have a weather mitigation rate design,  
4 would result in less of an adjustment than it might for other  
5 utilities, and given our experience with environmental cost,  
6 I think it would probably be fair to say that any kind of  
7 adjustment, assuming there was one at some point in the  
8 future, would be pretty modest in nature. I don't believe  
9 that you're going to see the kind of adjustments that you  
10 might see with other industries.

11                   COMMISSIONER CLAYTON: Are there any  
12 restrictions on the implementation of one or more of these  
13 surcharges at any given time?

14                   MR. PENDERGAST: Well, the statute talks about  
15 there being a hearing opportunity before they are put into  
16 effect. I guess people could have different views on when  
17 that hearing opportunity needs to be. On the environmental,  
18 there are strict limitations on how much of an increase can  
19 incur on any given year.

20                   On the environmental, there's also a consumer  
21 safeguard, that one has to have a rate case on a periodic  
22 basis in order to go ahead and continue to collect amounts  
23 under the provision. And there are true-up provisions to  
24 ensure that no costs are over-recovered and that they are  
25 accurately reconciled. And a few other safeguards as well,

1 but I think those are the major ones.

2 COMMISSIONER CLAYTON: But there are no  
3 restrictions? If each surcharge were implemented properly,  
4 and the balances were adjusted, according to the statute, you  
5 could have three additional surcharges implemented at once?  
6 I mean, not at one time, but could be on a bill at a given  
7 time?

8 MR. PENDERGAST: Well, if you're adding in the  
9 ISRS --

10 COMMISSIONER CLAYTON: I am.

11 MR. PENDERGAST: -- that's already in effect,  
12 that would be a possibility, and as I said, those can go  
13 both -- at least the weather one can be up and down, and it's  
14 possible that the environmental can as well.

15 COMMISSIONER CLAYTON: Okay. Paragraph 11,  
16 regarding off-system sales capacity release, Mr. Meyer, could  
17 you tell me the dollar amount of imputed revenue that  
18 supposedly Laclede will be receiving? Mr. Pendergast, do you  
19 have the amount of imputed revenue? Do I have it wrong?  
20 Have I read this incorrectly?

21 MR. PENDERGAST: I would say that there is no  
22 specific number for imputed revenue. What I can tell you,  
23 Commissioner, is that parties had different recommendations,  
24 I think ranging from \$3.9 million up to \$8.5 million of how  
25 much off-system sales revenue should be imputed in base

1 rates. We ultimately reached an agreement based on an  
2 overall dollar amount that did not try and specifically  
3 segregate what the value of those off-system sales revenues  
4 were.

5 I think every party probably had some figure  
6 in the back of their mind when they proposed and were able to  
7 reach an agreement on an overall dollar amount. But what I  
8 can tell you is it's made a significant contribution to the  
9 level of rate relief that has been requested in this case,  
10 and I mean a positive contribution in reducing that level.  
11 As I indicated before, we've made approximately \$90 million  
12 worth of net investments in the last three years, had \$16  
13 million worth of operating increases, and yet we are here  
14 today asking for only an \$8.5 million incremental increase in  
15 new charges.

16 Part of that has to do with the fact that our  
17 efforts to sell gas to customers located off our system and  
18 bring revenue in has enabled us to reach an agreement on an  
19 overall level of revenue requirement that would seem to be  
20 less than what those figures would suggest, if you didn't  
21 take that into account.

22 COMMISSIONER CLAYTON: I appreciate that.  
23 Moving forward, though, it seems like there's a designed  
24 incentive program of some sort for off-system sales that will  
25 enable Laclede to keep those revenues rather than offset

1 future rates; is that correct?

2 MR. PENDERGAST: Well, I think the fair way to  
3 characterize it, and other parties can certainly jump in, is  
4 that as we have done in the past, we sort of pay our license  
5 fee at the office. And by imputing a level of off-system  
6 sales revenue in this case -- in between cases, we are then  
7 permitted to keep up to \$12 million in exchange for having  
8 done that. And then if the amount goes over \$12 million that  
9 we're able to go ahead and generate, at that point, we would  
10 begin sharing that with our customers on a 50/50 basis. And  
11 if we would accumulate \$5 million in excess amounts, those  
12 amounts would -- the Staff or Public Counsel could apply to  
13 have those immediately distributed to customers.

14 COMMISSIONER CLAYTON: So according to this,  
15 Laclede will be able to keep the first \$12 million?

16 MR. PENDERGAST: That's correct, having  
17 already recognized and taken on the risk for a significant  
18 amount of those through a current reduction in rates.

19 COMMISSIONER CLAYTON: Okay. And the  
20 reduction that you're referring to is something other than  
21 the \$3.9 to \$8.5 million positions with regard to off-system  
22 sales revenue?

23 MR. PENDERGAST: I think it's probably fair to  
24 say that, and I think it's fair to say that people could go  
25 ahead and, you know, make assumptions as to what that number

1 was as part of their overall settlement package, but it's not  
2 spelled out.

3 COMMISSIONER CLAYTON: Is this the first  
4 incentive plan of its kind in Missouri, and I'm speaking only  
5 from a short history at the Commission. So do you know?

6 MR. PENDERGAST: Well, this particular kind,  
7 yeah, I haven't seen this specific feature before. I mean,  
8 MGE, as I recall, had one where it's included in the PGA, and  
9 I believe they keep 35 percent of the off-system sales  
10 revenue that they're able to generate, and it may be subject  
11 to some sort of sharing grid. I don't recall at the moment.

12 Obviously, we've had ours in base rates  
13 before. Before they were in base rates, they were in the  
14 PGA, and they were subject to a sharing grid, so it's a  
15 variation on what, you know, you've seen before, but you  
16 haven't seen one exactly like this before.

17 COMMISSIONER CLAYTON: Mr. Meyer, do you  
18 concur with everything that Mr. Pendergast has said so far or  
19 from the position of Staff?

20 MR. MEYER: I do, and we have a Staff witness  
21 available to address our particular perspective on these  
22 issues, but as Mr. Pendergast said, there's no absolute  
23 dollar figure imputed.

24 COMMISSIONER CLAYTON: Has the Chapter 13  
25 rulemaking begun, as referenced in Paragraph 2(b), regarding

1 the use of credit scoring for the use of deposits, Mr. Meyer?

2 MR. MEYER: I believe the Commission has begun  
3 that, yes.

4 COMMISSIONER CLAYTON: Where is it in the  
5 process?

6 MR. MEYER: I think it's in the round table  
7 process. I don't know if there's a case number assigned to  
8 it yet.

9 COMMISSIONER CLAYTON: I'm going to have more  
10 questions about this. I don't know who to ask, Mr. Meyer. I  
11 don't know if the Commissioners have other questions of the  
12 attorneys. Then I would suggest not necessarily moving  
13 forward with a witness, but I'm going to have questions for  
14 whoever the Staff witness is going to be to answer these  
15 questions. So I'm not sure what you want to do.

16 JUDGE DIPPELL: Are there other -- going to be  
17 other Commission questions for the attorneys?

18 CHAIRMAN DAVIS: Yes.

19 JUDGE DIPPELL: We'll just go ahead and move  
20 on and we'll come back to the Chapter 13 questions, if that's  
21 okay.

22 COMMISSIONER CLAYTON: Well, I'm going to have  
23 questions regarding a lot more things, all the things that  
24 Mr. Meyer couldn't -- that he couldn't -- that he putted to  
25 the Staff witness. I'm going to have questions for those, so



1 that's what I'm saying. Before calling a witness, if there  
2 are other questions for the attorneys here.

3 JUDGE DIPPELL: Okay. Let's see if there are  
4 other questions for the attorneys, and then we'll begin  
5 calling some Staff witnesses. Commissioner Appling, did you  
6 have --

7 COMMISSINER APPLING: No questions.

8 JUDGE DIPPELL: Mr. Chairman, did you want to  
9 ask questions now?

10 CHAIRMAN DAVIS: Yes, I've got a few. Okay.  
11 Mr. Pendergast, the provisions of the stip and agreement  
12 allow you to allow Laclede Gas to collect a four-month  
13 deposit based on the highest monthly charge for the year; is  
14 that correct?

15 MR. PENDERGAST: Actually, Chairman, what we  
16 have done is we have substituted what used to be the two  
17 highest monthly bills, and instead of collecting a deposit  
18 equal to the two highest monthly bills, do one that's equal  
19 to four average bills. Our calculations indicate that that  
20 will probably result in a slightly smaller deposit than would  
21 otherwise be the case.

22 And really, the only reason that we proposed  
23 it, and the only reason we want to do it, is it's just easier  
24 under our billing system to calculate four average months  
25 rather than to try and look at the two highest months.

1 Because of the certain rebillings and things of that nature,  
2 there can sometimes be problems using the two highest. It's  
3 easier to use the four average.

4 CHAIRMAN DAVIS: Now, do all the other  
5 counsels, particularly the OPC and Staff, do you agree with  
6 that?

7 MR. DANDINO: Your Honor, if I may, since I  
8 got in on this at the very last minute, Ms. Meisenheimer has  
9 been involved from the very beginning. If she could respond  
10 to it, I would certainly appreciate it, rather than give you  
11 some incorrect information.

12 CHAIRMAN DAVIS: Does she have to be sworn?

13 JUDGE DIPPELL: I think it's best if she's  
14 sworn, but she can stay where she is.

15 CHAIRMAN DAVIS: Do you want to swear her in  
16 real quick?

17 (THE WITNESS WAS SWORN.)

18 JUDGE DIPPELL: Go ahead, and if you can  
19 answer the Chairman's question.

20 MS. MEISENHEIMER: Yes, I wouldn't disagree  
21 with that. There are a few winter months with typically a  
22 very high bill, so that when you spread it out over an annual  
23 basis, and then take an average of -- or take a four-month  
24 average versus two-month highest, it seems reasonable to me  
25 that it would be slightly lower, so I don't dispute that.

1                   CHAIRMAN DAVIS: So it would be slightly  
2 lower. So it wouldn't be a substantial increase, which is  
3 what I was concerned about?

4                   MS. MEISENHEIMER: No, I don't think it will  
5 be a substantial increase. I did not crunch the numbers to  
6 verify the exact dollar amount.

7                   CHAIRMAN DAVIS: Okay.

8                   MS. MEISENHEIMER: Based on my experience, I  
9 don't think that it would -- it would result in an increase  
10 to customers in terms of the amount of the deposit.

11                  CHAIRMAN DAVIS: And Ms. Meisenheimer, were  
12 there any discussions about the payment period for the  
13 deposits? My understanding is that Laclede will only prorate  
14 it over three months, and that might have been hardship for  
15 some people.

16                  MS. MEISENHEIMER: There was substantial  
17 discussion in negotiations regarding deposits in terms of the  
18 amount and the length of time. I might pass the three-month  
19 issue to Mr. Pendergast.

20                  CHAIRMAN DAVIS: Okay. Mr. Pendergast?

21                  MR. PENDERGAST: Yes, Chairman, actually, we  
22 had wanted to have greater opportunity to collect the  
23 deposits up-front. Our experience has been, at least in some  
24 situations, that if you don't collect the deposit in advance,  
25 you never collect it, and you wind up with an uncollectible

1 expense and no deposited money to pay for it. Nonetheless,  
2 we did not pursue that.

3                   Other problems -- or other parties had a  
4 concern about it. It is an issue that my understanding --  
5 based on my understanding, will be discussed and addressed in  
6 billing practice rulemaking proceedings, and we decided to  
7 defer that issue until that time and make no change at this  
8 time.

9                   MS. MEISENHEIMER: I'm sorry, Chairman, I  
10 thought you were asking about a three-month increment. Our  
11 office did, in fact, oppose the concept of prepaid deposits  
12 in the negotiations.

13                   MR. PENDERGAST: And that's what I'm  
14 suggesting. That meant opposition from parties, so we did  
15 not pursue that.

16                   MS. MEISENHEIMER: In terms of the length of  
17 time over which deposits can be collected, I just wanted to  
18 point out that this, in no way, interferes with the  
19 provisions of the cold weather rule in terms of deposits, and  
20 the length of time over which the Company has to give a  
21 customer to make those deposit payments.

22                   MR. PENDERGAST: Chairman, yeah, it's my  
23 understanding. It's a good point is that under the cold  
24 weather rule, and correct me if I'm wrong here, but it is  
25 standard practice when you do reach a payment agreement under

1 the cold weather rule not to require the payment of a deposit  
2 under those circumstances.

3                   CHAIRMAN DAVIS: Okay. So from the period  
4 that the cold weather rule is in effect, you can't collect  
5 any of the deposit payments; is that correct?

6                   MR. PENDERGAST: That's correct. And so I  
7 think the system already provides some relief for those  
8 customers that need it most.

9                   CHAIRMAN DAVIS: At the local public hearings,  
10 we heard testimony that -- from certain state legislators  
11 that believed it was somehow improper to, I guess, okay. I  
12 guess here's my question:

13                   The ISRS charge that was being collected, that  
14 is no longer being collected, is that money just going into  
15 base rates so it's not being used for infrastructure or  
16 anything else?

17                   MR. PENDERGAST: Yes, I think it's fair to say  
18 that the way it works, Chairman, is that when we first  
19 calculated the ISRS charge, it's not designed to recoup the  
20 entire investment. Like traditional rate-making, it allows  
21 you to establish a revenue requirement that reflects the  
22 depreciation associated with it. It reflects a return on  
23 that particular investment, but you only get a return on and  
24 a return of during the period of the ISRS charge.

25                   In fact, when you come to a rate case, at that

1 point, you roll that rate base, if you will, into generates.  
2 You will go ahead and continue to earn a return on it, and a  
3 return of your investment over the 30 or 40 or 50 years that  
4 it takes to finally get it all back. And at that point, it's  
5 like any other rate base item that will go ahead and be  
6 reflected in rates and recovered over time. And then any  
7 additional investment that may be subject to a future charge  
8 will be incremental investment that wasn't previously picked  
9 up and included in rates.

10 So, I heard the concern that you did about  
11 possible double-dipping. The statute is designed to preclude  
12 that -- to prevent that, and I think everybody here who is  
13 familiar with how the ISRS issue was handled in this case  
14 would indicate that there should be no concern that that's,  
15 in any way, a problem.

16 CHAIRMAN DAVIS: Does everyone else here  
17 concur with that analysis? Mr. Meyer?

18 MR. MEYER: Yes, we do.

19 CHAIRMAN DAVIS: Mr. Dandino?

20 MR. DANDINO: Yes, your Honor.

21 CHAIRMAN DAVIS: Okay. Mr. Pendergast, we  
22 heard a lot of testimony about meter reading, et cetera. And  
23 it was pointed out at the public hearings that once the  
24 technology is implemented, that it would be a substantial  
25 cost savings to Laclede Gas. I just roughly estimated it at

1 \$5 million, you know, more or less. I'm assuming there would  
2 be some ongoing expenses, which I couldn't guess. And that's  
3 not being addressed in this case, correct?

4 MR. PENDERGAST: That's correct, your Honor.  
5 And if I could briefly respond to that. I appreciate the  
6 union's statement that that issue has no relevancy to this  
7 particular case. At the same time, though, I want to make  
8 sure that the record is straight about what the impact of our  
9 automatic meter reading efforts will be. I think that as a  
10 rough calculation, taking the numbers that you did would  
11 provide an indication of what one side of the equation would  
12 be.

13 However, as we move through the transition  
14 period, towards implementing AMR fully, we will be paying for  
15 each meter read that we receive. That's an offsetting cost.  
16 I think it's fair to say that over the next two years, as we  
17 go through this transition period, that it is likely that our  
18 cost for this particular function will be slightly higher  
19 than they otherwise would be, simply because we will continue  
20 to go ahead and have meter readers on board for a significant  
21 portion of that period of time while we are also paying to  
22 have meter reads, making sure that the system is working  
23 properly, that we have all the safeguards we need so that we  
24 know we are getting accurate bills out.

25 Even though it will be, probably, a slight

1 increase over the next couple of years, we thought that this  
2 was a significant enough advance in customer service that it  
3 was worth the Company paying for that on its nickel. What I  
4 will say is that over the long-term, because of the  
5 arrangements, which I'm not in a position to go ahead and  
6 probably disclose publicly because our provider is in a  
7 competitive marketplace, that hopefully there will be  
8 long-term savings. And my supposition would be that before  
9 those long-term savings really begin to materialize, we'll be  
10 coming back down to see the Commission again, probably with  
11 another rate filing, at which they can go ahead and be  
12 incorporated to the benefit of our customers.

13                   CHAIRMAN DAVIS: Okay. Mr. Pendergast, what  
14 would you calculate the ROE being if we approve this stip  
15 agreement?

16                   MR. PENDERGAST: The stipulation and agreement  
17 does not set out a specific ROE. What it does is it sets out  
18 an ROE and capital structure to be used for purposes of  
19 future ISRS filings. I don't know that that's necessarily  
20 what all of the parties would say was the ROE that was  
21 underlined or specific overall dollar amounts.

22                   I was satisfied that -- that given what we  
23 knew, that we thought it was an ROE that was close to  
24 mainstream ROE, if you will, based on what's been authorized  
25 for other utilities, but that's simply, you know, our



1 perspective. And other parties may have different  
2 perspectives. It was a, basically, overall dollar  
3 settlement, and that is not specifically set out. I wish I  
4 could be more helpful.

5                   CHAIRMAN DAVIS: So I'm not going to get  
6 anything out of you if I keep asking you questions,  
7 Mr. Pendergast?

8                   MR. PENDERGAST: Probably nothing a whole lot  
9 more definitive than that, but as I said, from our  
10 perspective, we thought that it was a reasonable return on  
11 equity that was more in the mainstream.

12                   CHAIRMAN DAVIS: So is it 10 percent or less?  
13 Can you give me a ballpark?

14                   MR. PENDERGAST: Well, from our perspective,  
15 you know, and you can look at it a lot of different ways, but  
16 we would certainly think it was in excess of 10 percent, and  
17 I think it would be fair to say it didn't get to 11.

18                   CHAIRMAN DAVIS: So somewhere between 10 and  
19 11?

20                   MR. PENDERGAST: From our perspective, yes.

21                   CHAIRMAN DAVIS: I'm looking at Mr. Dandino,  
22 but I'm thinking I'm probably going to have to go to Ms.  
23 Meisenheimer. Is she still under oath, Judge?

24                   JUDGE DIPPELL: Yes.

25                   CHAIRMAN DAVIS: Ms. Meisenheimer, do you

1 concur with that analysis?

2 MS. MEISENHEIMER: We relied on the Staff's  
3 accounting data and calculations. They may be able to speak  
4 more to what rate of return they consider it to be.

5 CHAIRMAN DAVIS: I'm waiting for Staff to  
6 speak.

7 MR. MEYER: Our analysis is set forth in  
8 Attachment 6, as far as the actual numbers that we used to  
9 the stipulation. Our common equity percentage was 9.43  
10 percent, et cetera, et cetera. Mr. Kiebel is here to discuss  
11 this analysis, if you would like. He was our designated  
12 witness in this case and had prepared testimony, so ...

13 JUDGE DIPPELL: Is that in one of the  
14 affidavits, Mr. Meyer?

15 MR. MEYER: Oh, I'm sorry, Attachment 6 to the  
16 stipulation and agreement.

17 CHAIRMAN DAVIS: Okay. I got it right here.  
18 It's the very last page, or at least in my packet. Okay.  
19 All right. Thank you, Mr. Meyer. All right.  
20 Mr. Pendergast, and I'm sorry for making you restate  
21 yourself, you can come in and file for another ISRS anytime?

22 MR. PENDERGAST: Once we accumulate, I believe  
23 it's \$1 million of revenue requirement-related investment in  
24 ISRS, we would be eligible to do that, yes.

25 CHAIRMAN DAVIS: And then assuming you do that

1 and then you make an ISRS filing and that's approved, then  
2 how long is the rate case triggered after that?

3 MR. PENDERGAST: It's, from what I recall, you  
4 need to file one within three years.

5 CHAIRMAN DAVIS: Three years. And roughly how  
6 long do you think it would take you to accumulate a million  
7 dollars in ISRS expenses?

8 MR. PENDERGAST: The way it has worked in the  
9 past, we've been able to accumulate that generally within  
10 five or six months. And as Mr. Zucker informed me, it can  
11 also depend on when you have increases in property taxes too.  
12 Like the rest of our bill, taxes make up a significant  
13 portion of our cost, and when they go up, it can -- it can  
14 accelerate when you're eligible to make the filing.

15 MR. MEYER: At the risk of possibly  
16 complicating things a little bit, I'll just note that the  
17 statute governing the ISRS provisions at Section 393.101(2),  
18 the ISRS dollar figure, it's -- the Commission may not  
19 approve an ISRS to the extent it would produce total  
20 annualized ISRS revenues below the lesser of \$1 million, or  
21 1/2 of 1 percent of the gas corporation's base revenue's  
22 level approved by the Commission in the gas corporation's  
23 most recent general case proceeding.

24 CHAIRMAN DAVIS: Is it the lesser of those  
25 two?

1 MR. MEYER: Correct.

2 CHAIRMAN DAVIS: Okay. Judge, I'm going to  
3 pass at this time and defer to my colleagues.

4 JUDGE DIPPELL: All right. Commissioner  
5 Murray, did you have any questions at this time?

6 COMMISSIONER MURRAY: I think I have one for  
7 Ms. Vuylsteke.

8 JUDGE DIPPELL: Okay.

9 COMMISSIONER MURRAY: And I'm not sure if she  
10 can answer it. You don't have a witness?

11 MS. VUYLSTEKE: I apologize, we do not.

12 JUDGE DIPPELL: Ms. Vuylsteke, can I just get  
13 you to go ahead and come up to the podium? It would be  
14 easier to hear you.

15 MS. VUYLSTEKE: And Commissioner, if I can't  
16 answer your question, we would be happy to have our witness  
17 file something later, or whatever the judge would like us to  
18 do to try to answer your question.

19 JUDGE DIPPELL: Let's see what our question is  
20 first.

21 MS. VUYLSTEKE: Okay.

22 COMMISSIONER MURRAY: In the tariff  
23 modifications on Page 3 of the stipulation and agreement,  
24 there is a provision to increase to \$2 per therm, the  
25 customers for gas used during periods of interruption. And I

1 was wondering if you know what percentage of an increase that  
2 is for the interruptible customers.

3 MS. VUYLSTEKE: I'm afraid that I don't, and  
4 like I said, I would be happy to try to provide that later,  
5 if that would be helpful, so ...

6 COMMISSIONER MURRAY: Okay. That's -- I think  
7 that's all I have for you. Thank you.

8 MS. VUYLSTEKE: Thank you. Sorry.

9 JUDGE DIPPELL: Mr. Pendergast, does Laclede  
10 know an answer to Commissioner Murray's question?

11 MR. PENDERGAST: I do know that in  
12 recommending the increase to \$2, we are treating those  
13 interruptible sales customers in the same way we treat our  
14 large volume transportation customers. It was designed,  
15 basically, to equalize what those late payment charges were,  
16 and current charges are approximately \$1 to \$2.

17 JUDGE DIPPELL: That's the current charge?

18 MR. PENDERGAST: Yes.

19 JUDGE DIPPELL: Do you have other questions,  
20 Commissioner Murray?

21 COMMISSIONER MURRAY: I don't believe so.

22 JUDGE DIPPELL: Okay. Commissioner Gaw, did  
23 you have any?

24 COMMISSIONER GAW: I do, but I'll --  
25 Commissioner Clayton wants to pick back up.

1 JUDGE DIPPELL: Okay. Let's go ahead and go  
2 to Staff's witnesses for Commissioner Clayton's questions.  
3 And Commissioner Clayton, do you have a -- where would you  
4 like to begin? The issue?

5 COMMISSIONER CLAYTON: Well, what's your plan,  
6 Judge? Are we just going to do my questions, do you want to  
7 swear in everybody at once? How do you want to do this?

8 JUDGE DIPPELL: I thought I'd begin with the  
9 witnesses that specifically were going to answer your  
10 questions, and if the other Commissioners have questions of  
11 those witnesses, we can -- or I can swear them in -- all in.  
12 I believe Mr. Rackers was going to be their main witness, but  
13 Mr. Kiebel can answer questions about --

14 COMMISSIONER CLAYTON: How many Staff  
15 witnesses are there that can answer questions throughout the  
16 stipulation?

17 MR. MEYER: Unfortunately, since testimony was  
18 not filed, I guess you're unaware of who was doing what. I  
19 guess, regarding Chapter 13, we have Gay Fred here.  
20 Regarding off-system sales and capacity release, David  
21 Sommerer could be available. Regarding the PGA --

22 COMMISSIONER CLAYTON: Slow down. This is  
23 getting to be a bigger list than what I anticipated. So who  
24 was the first person? Gay?

25 MR. MEYER: I'm going from what I'm guessing

1 would be the shortest to the longest. Gay Fred for Chapter  
2 13. David Sommerer for off-system sales and capacity  
3 release. Tom Imhoff for the PGA, and Steve Rackers for  
4 accounting issues.

5 COMMISSIONER CLAYTON: So we have four  
6 witnesses from Staff. How many witnesses does Office of  
7 Public Counsel have available today?

8 MR. MEYER: And I would clarify we have other  
9 witnesses, but those appear to be the ones best suited to  
10 answer your questions.

11 MR. DANDINO: Public Counsel has one witness,  
12 your Honor.

13 COMMISSIONER CLAYTON: Okay.

14 MR. DANDINO: As our whole staff is here.

15 COMMISSIONER CLAYTON: And Mr. Pendergast,  
16 will you continue to be the contact, or do you have  
17 witnesses? I don't know if I'm going have questions for  
18 Laclede.

19 MR. PENDERGAST: We have three folks here that  
20 can address, I think, most, if not all, of the issues you  
21 might want to ask, so...

22 COMMISSIONER CLAYTON: Where to begin. Well,  
23 if I have to start somewhere, I guess I'm going to talk about  
24 off-system sales, so who was that again?

25 MR. MEYER: Mr. Sommerer.

1                   COMMISSIONER CLAYTON: Okay.

2                   MR. MEYER: I think he was here earlier,  
3 apparently he's gone upstairs. Somebody's getting him now.  
4 Thank you.

5                   COMMISSIONER CLAYTON: Well, then, how about  
6 Mr. Rackers. He's here, I guess.

7                   JUDGE DIPPELL: Mr. Rackers, if you'd like to  
8 come to the witness stand.

9                   (THE WITNESS WAS SWORN.)

10                  COMMISSIONER CLAYTON: Okay. May it please  
11 the Commission?

12                  JUDGE DIPPELL: Perhaps I should ask  
13 Mr. Rackers to state his name and his position at the PSC.

14                  MR. RACKERS: Steven M. Rackers, and I'm with  
15 the auditing staff of the Public Service Commission.

16                  JUDGE DIPPELL: Thank you, Mr. Rackers.  
17 Please go ahead, Commissioner.

18 QUESTIONS BY COMMISSIONER CLAYTON:

19                  Q.       Mr. Rackers, can you tell me which provisions  
20 of the stipulation you are most knowledgeable? And just  
21 speaking in general terms of the pension and postemployment  
22 benefits section, you're knowledgeable about them?

23                  A.       Yes, I am.

24                  Q.       What else, depreciation?

25                  A.       Yes.



1 Q. What else?

2 A. Revenue requirement, gas inventories,  
3 accounting authority order, off-system sales and capacity  
4 release, additional billing information, and the ISRS.

5 Q. Okay. Let's start with the off-system sales  
6 and capacity release issue. What was the Staff position on  
7 how much revenue should be imputed to Laclede, I guess, which  
8 would be a reduction in their revenue requirement?

9 A. I believe the original Staff position was  
10 approximately seven million.

11 Q. Seven million dollars? And on this type of  
12 issue, the higher the dollar amount, the -- theoretically,  
13 the better for the ratepayer?

14 A. That's correct.

15 Q. Because you increase the amount of the  
16 reduction from revenue requirement, then the less money that  
17 has to be recovered from the ratepayer?

18 A. That's correct.

19 Q. Correct? So in this settlement, would you  
20 explain whether there was an imputed level of revenue or not?

21 A. Yes, there was.

22 Q. There was. And what was that amount?

23 A. Well, the -- as I think the attorneys  
24 explained, that amount is not specifically specified or  
25 spelled out in the agreement. I can tell you from Staff's

1 point of view, we think it is a reasonable sharing of the  
2 off-system sales and capacity release that the Company's able  
3 to achieve.

4 Q. So it's in there, but nobody knows what it is?

5 A. It's not specified by the agreement.

6 Q. So how do you know it's in there?

7 A. Well, I know that off-system sales and  
8 capacity release were used to come up with the revenue  
9 requirement that Staff suggested.

10 Q. How long have you been at the Commission,  
11 Mr. Rackers?

12 A. About 27 years.

13 Q. And have you been a part of an incentive  
14 mechanism for an LDC that's mentioned or referenced in this  
15 agreement?

16 A. Yes.

17 Q. You have worked on things like this before?

18 A. Yes.

19 Q. Okay.

20 A. Are you talking about the off-system sales  
21 mechanism?

22 Q. The incentive mechanism, or the mechanism for  
23 sharing revenues.

24 A. With regard to off-system sales?

25 Q. Yes.

1           A.     Yes.

2           Q.     And when was the last time that the Commission  
3 has approved a mechanism like that?

4           A.     I can't give you the case number, but I think  
5 it was part of the MGE case.

6           Q.     So -- and that's the most recent MGE case?

7           A.     Yes.

8           Q.     Okay.  Is the mechanism in here anything  
9 different than what Staff normally recommends?  Does Staff  
10 recommend a mechanism such as this?

11          A.     A mechanism such as this has been part of, I  
12 believe, at least the last three Laclede settlements.  I  
13 would tell you that being able to share in off-system sales  
14 and capacity release revenue above 12 million is actually an  
15 enhancement for the ratepayer over what's been approved in  
16 previous Laclede cases.

17          Q.     Okay.  According to the settlement, though,  
18 \$12 million would have to be realized in off-system sales or  
19 capacity relief before the ratepayer would receive any type  
20 of credit or offset?

21          A.     Over and above what's been included or imputed  
22 in the base revenues.  In other words --

23          Q.     But that amount is not identifiable, right?

24          A.     It's not specifically identified.

25          Q.     So how do you know when you cross that

1 threshold then? How do you know when you cross -- you're  
2 saying it's \$12 million plus an unidentified amount. How do  
3 you know when you pass that threshold?

4 A. I'm sorry. As soon as the Company achieves 12  
5 million of off-system sales and capacity release, it begins  
6 to share 50/50 with the ratepayers.

7 Q. Okay. Thank you for clearing that up. With  
8 regard to gas inventory, what do you look at from your  
9 perspective as a Staff witness?

10 A. We look at the -- the amount of inventories  
11 that the Company has in storage, either in its owned  
12 facilities or on the MRT system.

13 Q. Do you do a reliability analysis, or is it  
14 purely a financial analysis for determining the revenue  
15 requirement?

16 A. Mr. Sommerer would have to tell you if he does  
17 a reliability analysis. As an accountant, putting together a  
18 revenue requirement, it's strictly financial.

19 Q. So just financial. Okay. Okay. You said  
20 that you had some accounting authority order --

21 A. Yes.

22 Q. -- part of the stipulation. Would you direct  
23 me to that?

24 A. That's Paragraph 10 on Page 5 of the  
25 stipulation.

1 Q. And could you just briefly describe each of  
2 those terms? Specifically, the gas safety expenditures,  
3 emergency cold weather rule amendment.

4 A. In the last case, the Commission granted the  
5 Company an accounting authority order that allowed it to  
6 accumulate costs associated with safety additions that it  
7 made on its system. And those costs have been accumulating  
8 since the last case, and the asset, or the accumulation, has  
9 been -- the revenue requirement associated with that has been  
10 included in rates in this case. And that's -- that's nothing  
11 new that hasn't occurred in previous Laclede cases.

12 Q. Okay.

13 A. And then --

14 Q. What was the date of that -- was that a 2001  
15 when that case was filed?

16 A. No, that was a 2002 case -- well, the case may  
17 have been filed in 2001. The rates took effect in 2002, I  
18 believe.

19 Q. Okay.

20 A. And then the cost of those accumulations was  
21 offset by any over-recovery of dollars that were previously  
22 included to cover the cost of the emergency cold weather  
23 rule.

24 Q. Okay. Okay. Did you do the pension analysis,  
25 the FAS 87, FAS 106?

1           A.     Yes.

2           Q.     Okay.  The -- let me find the right paragraph,  
3 just a second here.  It's been some time since the  
4 Commission's actually had the pension issue before us.  I  
5 think it's been a couple of years.  What is the position  
6 taken in this stipulation?  Is it Staff's position, or is it  
7 Laclede's position --

8           A.     Well --

9           Q.     -- in that stipulation?

10          A.     -- this position is actually almost exactly  
11 the same as provisions that have been in Laclede's rates and  
12 Laclede cases for the last three rate cases, since 2001.  And  
13 it's a negotiated position.  It -- it gives Staff what Staff  
14 wants, which is it reflects actual pension costs in rates.

15          Q.     So it's a cash basis rather than the accrual  
16 basis -- I don't even know if that's a fair comparison, cash  
17 versus accrual.

18          A.     I wouldn't characterize it that way.  It  
19 recognizes actual cost, actual contribution to the pension  
20 fund, but it also recognizes the difference between that and  
21 accrual accounting, so that the Company can satisfy concerns  
22 of its outside auditors.

23          Q.     Are the pension expense and postemployment  
24 benefit provision, are they treated identically?

25          A.     Yes, they are.

1 Q. Okay. Do you agree that the net salvage issue  
2 is worth roughly \$6 million that was suggested earlier? Is  
3 that a fair assessment of its value and revenue requirement?

4 A. Yes, it was.

5 Q. Did you do ROE analysis for cost of equity?

6 A. No, I didn't.

7 Q. That's Mr. -- who did that?

8 A. Mr. Kiebel actually did the analysis. I mean,  
9 I'm not sure what your question is. I may be able to address  
10 it.

11 Q. ROE, did you do ROE, or no?

12 A. The ROE that's in this agreement is inherent,  
13 I think, as the attorneys told you, in the rate increase.  
14 It's a black box, you know, with regard to ROE.

15 Q. Let me ask the question again. Did you  
16 prepare the Staff position for ROE in the case?

17 A. No, I did not.

18 Q. You did not. That was Mr. Kiebel?

19 A. Yes, sir.

20 COMMISSIONER CLAYTON: Okay. I don't think I  
21 have any other questions for this witness. Thank you for  
22 coming in.

23 JUDGE DIPPELL: Thank you. Commissioner  
24 Murray, do you have questions?

25 COMMISSIONER MURRAY: Just briefly. Thank

1 you.

2 QUESTIONS BY COMMISSIONER MURRAY:

3 Q. Good morning.

4 A. Good morning.

5 Q. Do you agree that the overall percentage of  
6 increase for residential customers resulting from the  
7 stipulation and agreement is 1 percent or less?

8 A. Yes, I do.

9 Q. What is the overall increase for commercial  
10 and industrial customers, percentage-wise, or can you --

11 A. I don't know that; Mr. Imhoff may know that.

12 Q. Okay. All right. That's all I have for you.

13 COMMISSIONER MURRAY: Thank you.

14 JUDGE DIPPELL: Thank you. Commissioner Gaw,  
15 did you have questions for this witness?

16 COMMISSIONER GAW: I don't think I do, but I  
17 need to go through my questions and see who knows the answers  
18 to them. I'm just going to do it that way.

19 JUDGE DIPPELL: Okay. Mr. Chairman, do you  
20 have any questions of this witness? You can always come back  
21 to them if there turn up questions later.

22 QUESTIONS BY CHAIRMAN DAVIS:

23 Q. Have you worked on Laclede Gas rate cases in  
24 the past?

25 A. Yes.



1 Q. And can you approximate the number of Laclede  
2 gas rate cases you've worked on, when they were, et cetera?

3 A. Well, the most recent cases the Company's had  
4 was a '99 case, a 2001 case, and a 2002 case, prior to this  
5 one, and I worked on all of those.

6 Q. And how would you rate this settlement in  
7 comparison to those settlements?

8 A. I believe this settlement is very reasonable,  
9 relative to what the Company asked for, and also with regard  
10 to the terms that it contains. And I would have to say  
11 that's true of the previous increases also.

12 Q. Let me ask you this: Do you believe that if  
13 the Commission were not to approve this stip and agreement,  
14 that Laclede Gas could come in and make a compelling argument  
15 for an even higher increase?

16 A. Well, I'm sure that they can make a compelling  
17 argument. I'd like to think that Staff would have arguments  
18 that would offset that.

19 Q. All right. So you think the settlement that  
20 was arrived at is where this Commission ought to be?

21 A. I do.

22 CHAIRMAN DAVIS: Thank you. No further  
23 questions.

24 JUDGE DIPPELL: Thank you. Commissioner  
25 Applling, do you have any questions for Mr. Rackers? We may

1 be bringing him back at a later time, but ...

2 COMMISSINER APPLING: Just a follow-up  
3 question.

4 QUESTIONS BY COMMISSIONER APPLING:

5 Q. You were in St. Louis at the hearings, weren't  
6 you, last week?

7 A. Yes, I was.

8 Q. What do I tell all those fired-up people in  
9 St. Louis that was screaming and hollering last week about  
10 don't do this?

11 A. Well, I think that you should tell them that  
12 this is a very fair settlement, especially in terms of the  
13 fact that it only raises the customer's bill by \$1 month, and  
14 I think that you should tell them that it contains provisions  
15 to help low income families.

16 Q. Okay.

17 A. Both to pay their bills, try to encourage  
18 reduction of their arrearages, and help with the efficiency  
19 of their homes.

20 Q. Thank you, Mr. Rackers. I appreciate it.

21 JUDGE DIPPELL: Thank you. And Mr. Rackers, I  
22 believe that's all the questions for you right now, but if  
23 you will remain where you can be recalled, if necessary.

24 MR. RACKERS: Sure.

25 COMMISSIONER CLAYTON: I guess am I driving

1 the train here?

2 JUDGE DIPPELL: Yes, Commissioner Clayton, I'm  
3 letting you drive the train.

4 COMMISSIONER CLAYTON. Well, if that's all  
5 right with everyone else.

6 MS. SHEMWELL: Commissioner Clayton, Dave  
7 Sommerer is here, if you have questions on off-system sales.

8 JUDGE DIPPELL: Ms. Shemwell said Mr. Sommerer  
9 is here.

10 COMMISSIONER CLAYTON: Didn't we go through  
11 off-system sales?

12 JUDGE DIPPELL: You asked Mr. Rackers some  
13 questions about off-system sales.

14 COMMISSIONER CLAYTON: I suppose is Gay Fred  
15 here?

16 MR. MEYER: She was the last time I turned  
17 around and now she disappeared.

18 COMMISSIONER CLAYTON: I don't know, I think  
19 all the questions I had on off-system sales were addressed.  
20 I didn't have that many. It's just frustrating asking two  
21 questions to four or five different people.

22 Can somebody just tell me the status of the  
23 Chapter 13 rulemaking? I don't need an exact position in the  
24 process, I just want to know it's referenced in the  
25 settlement. Can somebody tell me about it?

1 JUDGE DIPPELL: Mr. Zucker looks like he can  
2 tell you.

3 MR. ZUCKER: I'm ready to give that one a try.  
4 We've had a number of round table meetings, and Ms. Fred, I  
5 think recently, sent around a final draft of a proposed rule,  
6 and then I think the next step would be if that -- if there  
7 are no further comments to it, to go forward and actually  
8 start the formal rulemaking process.

9 COMMISSIONER CLAYTON: So to the best of your  
10 knowledge, the Commission has not opened a case, we haven't  
11 reviewed any language at the Commission level yet?

12 MR. ZUCKER: Right, no. So far, the meetings  
13 have been with Staff, the utilities, and Public Counsel.

14 COMMISSIONER CLAYTON: Is the stipulation  
15 dependent upon certain actions of the Commission in the  
16 rulemaking process? For example, does the -- does the  
17 stipulation contemplate that we will reach a result in a  
18 certain way, and will it alter the terms of the agreement?

19 MR. ZUCKER: Well, yes. The stipulation says  
20 that we will try certain things on an experimental basis,  
21 pending the outcome of the rulemaking. So if the rulemaking  
22 treats these issues differently, then we'll make an  
23 adjustment to accommodate that.

24 COMMISSIONER CLAYTON: And can you just  
25 identify the particular issues that are contemplated?

1 There's the amount of the deposit, there's the credit score  
2 issue. I guess that may be one in the same. Actually, the  
3 amount of the deposit and the credit score is the second  
4 issue. Discontinuance of service --

5 MR. ZUCKER: That's correct.

6 COMMISSIONER CLAYTON: How far -- how far  
7 outside of -- well, I guess I'm not sure how to ask this  
8 question. If we -- and I'm just hypothetically, so don't --  
9 I mean, I'm not saying -- trying to make any commentary on  
10 this, but if we were to say -- say that a credit score could  
11 not be used in determining the amount of the deposit, what  
12 would happen -- is there a trigger in the stipulation that  
13 something else would happen that would change the terms of  
14 the stipulation?

15 MR. ZUCKER: Well, currently, Laclede takes  
16 deposits from all renters. What we were hoping to do through  
17 this stipulation and through credit scoring is to only take  
18 deposits from those customers who have a less than adequate  
19 credit score. If the Commission ends up rejecting that, then  
20 our rule would -- our tariff would either go with what the  
21 Commission did approve, or revert back to what we had before.

22 COMMISSIONER CLAYTON: But it doesn't trigger  
23 something else in the stipulation that would either change a  
24 revenue requirement or change a reporting requirement or some  
25 other type of consumer issue or financial issue?

1 MR. ZUCKER: No.

2 COMMISSIONER CLAYTON: Okay. And is that --

3 is your answer the same on each of the subparagraphs of

4 Paragraph 2? Because I think it lists out --

5 MR. ZUCKER: Yes, I believe the --

6 COMMISSIONER CLAYTON: That's contemplated by

7 the Chapter 13 rulemaking process?

8 MR. ZUCKER: Whatever comes out of that

9 rulemaking will only effect these particular tariff issues.

10 COMMISSIONER CLAYTON: Okay.

11 MR. DANDINO: Commissioner Clayton, Ms.

12 Meisenheimer has a comment on the status of the Chapter 13.

13 MS. MEISENHEIMER: I just -- I just would like

14 to make it clear that, primarily, it has been the industry

15 and the Staff that has worked on the draft document that's

16 circulating. Our office has substantial concerns with what

17 we see in that document, and I just wanted to clarify that

18 although it was characterized that Public Counsel has

19 participated, we've had very limited participation so far,

20 and we're not on-board with that proposal at this time.

21 COMMISSIONER CLAYTON: Well, who has been

22 participating if you all haven't? Has it simply been Staff

23 and the Company?

24 MS. MEISENHEIMER: Primarily, it has been

25 Staff and the industry.

1                   COMMISSIONER CLAYTON: Okay. Has Office of  
2 Public Counsel been excluded from the discussions?

3                   MS. MEISENHEIMER: No, we simply have limited  
4 resources. I have reviewed a draft and provided my -- my  
5 boss with comments related to the draft that's been  
6 circulating. And we do intend to raise concerns about  
7 portions of that document.

8                   COMMISSIONER CLAYTON: Okay.

9                   JUDGE DIPPELL: Commissioner, did you have any  
10 questions for Ms. Fred?

11                   COMMISSIONER CLAYTON: Only if she has  
12 anything to add to what's been said already. I mean, I'm  
13 frustrated. I don't know if it's coming out. I'm a little  
14 frustrated because I'm not trying to get that deep into these  
15 issues. I just wanted to have a basic overview of them, and  
16 I didn't know we were going to need multiple witnesses, so  
17 that's why I'm -- she's going to have to be sworn now.

18                   ( THE WITNESS WAS SWORN. )

19                   JUDGE DIPPELL: Thank you. If you could state  
20 your name and just give your position with the Commission.

21                   MS. FRED: My name is Gay Fred. I'm the  
22 consumer services manager for the Missouri Public Service  
23 Commission.

24                   JUDGE DIPPELL: And then did you have an  
25 answer or anything additional?

1 COMMISSIONER CLAYTON: I'll re-ask the  
2 question.

3 QUESTIONS BY COMMISSIONER CLAYTON:

4 Q. Do you have anything to add with regard to the  
5 Chapter 13 rulemaking provision, which is Paragraph 2 of the  
6 stipulation and agreement?

7 A. Well, I can tell you that the Chapter 13  
8 provisions, as they are right now, they're in draft form.  
9 The industry has met as stated collectively. We've met with  
10 gas, electric, and water companies. We have had Office of  
11 Public Counsel involved, just recently. Again, given to  
12 their limited staff ability, so we do know that they have  
13 some concerns that we can -- that we hope we can continue to  
14 work through this, and then present to the Commission.

15 Right now, where this -- the entire draft of  
16 the Chapter 13 rewrite stands, there's an issue paper  
17 developed, there's a rewrite of the entire rule that's been  
18 red-line-strike-out developed. It's ready to present to the  
19 Commission; however, due to your extremely busy schedules  
20 lately, I have not taken the liberty to place it on for  
21 discussion yet. But it is at that stage, at this point, to  
22 move forward to the Commission for hopefully establishing a  
23 case in order to continue to work on the draft of the rule.

24 Q. How many rules are contemplated in this  
25 section? Is it just one rule?



1           A.       In the section of the stipulation and  
2 agreement?

3           Q.       Well, the reference of Chapter 13 rulemaking,  
4 and specifically Paragraph 2, has A through G provisions,  
5 which I'm not sure how many of those will be involved in the  
6 rulemaking, but how many rules are we talking about here?

7           A.       You're talking about only one rule, that's  
8 Chapter 13 that deals with service and billing practices for  
9 residential customers of gas, electric, and water utilities.

10          Q.       Okay. And are you telling me that there is  
11 a -- a consensus or an agreement between Laclede and Staff at  
12 this point?

13          A.       There's consensus among all parties and Staff  
14 at this point, which this proposed rule --

15          Q.       And who are the other parties that have been  
16 involved?

17          A.       AmerenUE, KCP&L, MGE, Empire, At Most,  
18 Laclede, Missouri American Water Company --

19          Q.       Okay.

20          A.       -- Aquila -- and Aquila.

21          Q.       Okay. And --

22          A.       And OPC -- we've had, like I said, limited  
23 participation by OPC. We have had some conversations about  
24 areas of still concern, but nothing blatantly brought out as  
25 a stop process at this point in time, still, a need to

1 continue to discuss among all parties.

2 Q. Okay. When would you anticipate that the  
3 notice of request for rulemaking, or whatever the process is,  
4 when would you anticipate that a case would be opened for the  
5 rulemaking process?

6 A. Hopefully within the next couple weeks:

7 Q. Couple weeks. Okay. Okay.

8 COMMISSIONER CLAYTON: I don't think I have  
9 any other questions.

10 JUDGE DIPPELL: Ms. Fred, let me just clarify.  
11 You said that there was one rule, but it's actually multiple  
12 rules within a chapter?

13 MS. FRED: It's the entire Chapter 13 rules.

14 JUDGE DIPPELL: The Staff, right now, is just  
15 working with the whole thing?

16 MS. FRED: The whole Chapter 13, yes, uh-huh.

17 JUDGE DIPPELL: Are there any other questions  
18 for Ms. Fred while she's at the podium?

19 CHAIRMAN DAVIS: Well, while she's here.

20 QUESTIONS BY CHAIRMAN DAVIS:

21 Q. Ms. Fred, you're in charge of, I guess, the  
22 consumer services here, which registers complaints, correct?

23 A. Correct.

24 Q. Could you give us a little bit about your  
25 impressions of Laclede's customer service and, you know, do

1 they -- do they respond to the complaints?

2           A.       As far as our complaints that we receive, they  
3 are very responsive to our complaints. We have an informal  
4 agreement among them and other utilities to try and respond  
5 to our complaints within a timely fashion. If it's a  
6 complaint dealing with disconnection or a threat of  
7 disconnection of services, or they've already been  
8 disconnected services, we ask that Laclede respond within a  
9 business day.

10                         With any other issue, billing adjustment,  
11 service quality issues, anything of that nature, we ask that  
12 they try and provide us some type of response within three  
13 days. With -- we allow them as long as 15 days for a full --  
14 what we call resolution report. Laclede has met all those  
15 requirements. We have not seen them neglectful in that in  
16 the last few months. They've been very responsive when we  
17 bring to their attention if they are lagging behind, and get  
18 right on top on catching up, and continue to respond in a  
19 very timing matter.

20                         For the most part, most of our complaints  
21 dealing with -- that actually are Laclede complaints, deal  
22 with billing issues. Either customers who can't make the  
23 payments, or need arrangements made, or need an extension on  
24 a deposit, and generally it's been our practice with them to  
25 be very congenial in trying to work that out with the

1 consumer and with us. And we've really not had any real,  
2 what I call, difficult issues to have to work around.

3 Q. Have you gotten a lot of Laclede complaints  
4 about estimated billing?

5 A. Yes, we do receive several complaints  
6 regarding estimated billing, primarily because the meters are  
7 inside and it's the access issue of getting into that meter.  
8 And that kind of cuts both ways, either the customer is not  
9 willing to let Laclede in to actually do the meter reading,  
10 or when they are available, it's not necessarily a convenient  
11 time for Laclede to make that meter reading. So we do deal  
12 with a great number of estimated billing complaints, but  
13 again, as usually due to the lack of access to a meter.

14 Q. All right. Thank you.

15 CHAIRMAN DAVIS: No further questions.

16 JUDGE DIPPELL: Thank you. Commissioner  
17 Murray, did you have a question for Ms. Fred?

18 COMMISSIONER MURRAY: Thank you.

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Ms. Fred, while you're here, I'd like to ask  
21 you, the subject of the automated meter reading has come up,  
22 and it came up in the local public hearings. I would like to  
23 know if you think that it would be helpful if there were an  
24 education process developed sometime between now and the next  
25 rate case to help customers understand the efficiencies that

1 can be gained from automatic meter reading, and the safety  
2 issues involved, and that kind of thing. In talking to  
3 customers, do you find that customers have concerns that  
4 perhaps they're not actually realistic?

5           A.       I find customers who are not well educated in  
6 what's involved in that automated meter reading process.  
7 They're under an impression that's not necessarily there.  
8 They don't realize this will eliminate the estimated bills  
9 that they may receive, that this will now reflect their  
10 actual usage on a more timely basis so that they are more  
11 appropriately billed.

12                       I think on my staff's behalf, we take every  
13 opportunity to educate customers on that. We also tell them,  
14 and provide conservation measures that they need to be aware  
15 of, and to take into consideration not only is it just a gas  
16 usage, but perhaps conservation measures, weatherization  
17 issues that they need to consider as well. I think it's fair  
18 to say you can never educate enough, so sure, there would  
19 definitely be -- it would be a good idea, or definitely be a  
20 need to try to educate consumers more on that very issue.  
21 Whether it be the automated meter reading device or on  
22 weatherization or conservation issues that they can control  
23 themselves.

24           Q.       And have you experienced customers who have,  
25 perhaps purposefully, not made it convenient for the meter

1 reading to be done?

2           A.       I think it's fair to say you're going to have  
3 a little of both. Yes. There's customers who definitely  
4 don't make it convenient to gain access into their property,  
5 and maybe it's not necessarily in their control. If they're  
6 renting the property, maybe the landlord controls the access  
7 to the meter, but nevertheless, it is that customer's  
8 responsibility to make arrangements to get access for that  
9 meter reading.

10                    On the flip side, I think there's customers  
11 who are ready and available, and because of other  
12 complications or schedulings, it's not always been met by  
13 Laclede. So I think it's a little of both.

14           Q.       Well, at the local public hearing, I was -- I  
15 took note of the testimony of one lady who lived in an  
16 apartment complex, as I understand it. And she said  
17 something to the effect of, everybody's afraid to open the  
18 door for the gas people, because we know everyone's having a  
19 hard time. And then when they finally got in, a couple of  
20 people's bills -- or a couple of people got their gas shut  
21 off. So it appeared to me that there was an attempt to not  
22 let the meter readers in, in order to prevent the gas company  
23 from knowing who was in arrears and who wasn't. I mean, were  
24 you at the local public hearing?

25           A.       No, I'm sorry, I wasn't.

1 Q. Okay. Thank you. That's all I have for you.

2 A. Sure.

3 JUDGE DIPPELL: Commissioner Clayton, did you  
4 have any additional questions?

5 COMMISSIONER CLAYTON: If you want to take a  
6 break, that's fine.

7 JUDGE DIPPELL: Okay. Let's go ahead and take  
8 about a 15 minute break, come back at 25 till by that clock  
9 in the back. Let's go off the record.

10 (A BREAK WAS HELD.)

11 JUDGE DIPPELL: Okay. We can go back on the  
12 record. Okay. We are back on the record after our break.  
13 I'm going to begin by asking -- I have one question of  
14 Laclède, and I'm going to begin with that, and then I'm going  
15 to go to Commissioner Gaw has some questions. The  
16 October 1st drop -- or the October 1st request for the  
17 tariff, that's not a drop-dead kind of date; is that correct?

18 MR. PENDERGAST: Well, we put language in  
19 there that has said, or as reasonably soon thereafter as  
20 practical. But from our perspective, you know, it's a very  
21 important aspect of the overall settlement. Is everything  
22 off if it's not done by then? No. But we would certainly  
23 appreciate any action the Commission could take to make it  
24 effective by that date. It is an important element of the  
25 overall package.

1 JUDGE DIPPELL: And there are some -- there  
2 are some items in the agreement that depend on that  
3 October 1st date; is that correct?

4 MR. PENDERGAST: Well, we certainly have a low  
5 income program. It's going to be October 1st. The sooner we  
6 can go ahead and get a Commission decision, the sooner we can  
7 go ahead and begin to work to implement that particular  
8 program, and the same thing is true with the energy  
9 efficiency programs that we have. And then, of course, you  
10 know, from the Company's perspective, to the extent that it's  
11 put in sooner rather than later, that does have a financial  
12 value to the Company that -- that as I said before, is  
13 important as part of the overall settlement.

14 JUDGE DIPPELL: Mr. Meyer, does Staff agree  
15 with his statements?

16 MR. MEYER: I don't believe we have anything  
17 to disagree with there. I would just note from an  
18 administrative perspective, I noticed that the tariff sheets,  
19 I believe, got entered into the EFIS system, and I would  
20 imagine, although I think you would probably know better than  
21 I would, that if, for some reason, this agreement is not  
22 implemented, I imagine those tariffs might still go into  
23 effect on October 1st, unless the Commission affirmatively  
24 suspends them, so I would just note that for your  
25 information.



1 JUDGE DIPPELL: All right. I appreciate that.  
2 And Mr. Dandino, Public Counsel have any positions to any of  
3 those statements?

4 MR. DANDINO: No, we agree with that.

5 JUDGE DIPPELL: All right. Commissioner Gaw,  
6 you had some questions.

7 COMMISSIONER GAW: Okay. Thank you, Judge.

8 JUDGE DIPPELL: If you have questions of  
9 witnesses that haven't been sworn, we can call them up and  
10 swear them in.

11 COMMISSIONER GAW: Only they can tell me that,  
12 so with that -- that caveat, let me see if I can -- I don't  
13 know if -- if counsel for -- for the union is just waiting to  
14 be released or not.

15 MS. SCHRODER: Yes, I am, actually.

16 COMMISSIONER GAW: Why don't I ask a few  
17 questions there, and then I'll get back to some other things.

18 JUDGE DIPPELL: Ms. Schroder, can I just get  
19 you to come up to the podium so we can hear you?

20 COMMISSIONER GAW: Ms. Schroder, first of all,  
21 welcome.

22 MS. SCHRODER: Thank you.

23 COMMISSIONER GAW: Let me ask you, generally,  
24 what were the concerns that your client had coming into this  
25 case?

1 MS. SCHRODER: Coming into the case in  
2 general, or coming into the public hearings?

3 COMMISSIONER GAW: Just in general, coming  
4 into the case, and in entering an appearance.

5 MS. SCHRODER: All right. And I have to  
6 apologize, I was not the attorney handling this from the  
7 beginning, so I may have to defer to my client at some point,  
8 but my understanding is that my client's concerns were that  
9 there are a number of bonuses that are paid to the top  
10 management of Laclede that he didn't -- that they did not  
11 believe the ratepayers should be paying for.

12 COMMISSIONER GAW: All right. Now, let me ask  
13 you, in regard to that particular issue, is your client  
14 satisfied in regard to whether or not, as regards this  
15 stipulation, addressing that issue?

16 MS. SCHRODER: As the proceeding went on, we  
17 learned that all of those bonuses -- or substantially all of  
18 them -- are paid by Laclede Group as opposed to Laclede Gas  
19 Company, and therefore they are not being paid directly by  
20 the ratepayers. You know, are my -- are my client reps  
21 personally satisfied with that response? No, because they  
22 feel like, indirectly, that's still being paid by the  
23 ratepayers, but they understand that that's not something  
24 that can be addressed through this rate-making.

25 COMMISSIONER GAW: Okay.

1 MS. SCHRODER: There was also an issue about  
2 the consumers, again, paying for top heavy management.  
3 Period. There was a specific ratio of management to  
4 bargaining unit employees, that I don't remember the actual  
5 numbers of, and I can get that number for you, if you would  
6 like, that -- that my clients were concerned about, because  
7 they just felt it was extremely top heavy, and that from  
8 their day-to-day experience with what actually goes on at  
9 Laclede Gas Company, they felt that all of that management  
10 was unnecessary.

11 We're talking about, you know, first level and  
12 second level supervisors here. I don't believe that they  
13 really think that was addressed through this rate-making  
14 process at all, but again, it's our understanding, going  
15 through this process, that that's just not a kind of factor  
16 that is really allowed to be addressed through the  
17 rate-making.

18 COMMISSIONER GAW: Okay. Can you explain that  
19 just a little more, if you can? I understand your  
20 circumstance, so ...

21 MS. SCHRODER: The -- you mean the issue about  
22 the fact that there is top heavy management?

23 COMMISSIONER GAW: When you say nothing can be  
24 done about it, or those are my words, not yours. Go ahead.

25 MS. SCHRODER: I understand that there are

1 sort of specific -- specific sets of factors that go into the  
2 rate-making for a utility, and that this factual pattern  
3 didn't fit into any of the factors that the Commission is --  
4 has jurisdiction to consider. And maybe that's something  
5 that needs to be changed, but I got the impression that that  
6 couldn't be changed for this particular rate-making. That  
7 may be something that we'll look into further.

8 COMMISSIONER GAW: Okay. What else?

9 MS. SCHRODER: There were safety concerns, and  
10 the hope that any monies that were being added with this new  
11 rate would be applied to addressing some of those safety  
12 concerns. And some of that is related to the automated meter  
13 reading issue, and I believe that Mr. Pendergast --  
14 Pendergast, excuse me, addressed that to some extent today  
15 with his statements.

16 He said that there is an intention for at  
17 least the next two years to continue to have meter readers go  
18 in and check to make sure that the automatic meter reading is  
19 working correctly, and that there are not safety issues  
20 relating to switching to that system. And that was a -- that  
21 was a big concern of my clients.

22 COMMISSIONER GAW: Okay. Is that it,  
23 basically?

24 MS. SCHRODER: Can I confer with my client for  
25 just a moment?

1 COMMISSIONER GAW: Sure.

2 MS. SCHRODER: Thank you. Thank you,  
3 Commissioner Gaw. My client would like for me to clarify one  
4 point, which is on the safety concern. Mr. Pendergast's  
5 statement only went to the next couple of years. And my  
6 client's concern is that gas leaks are often caught by the  
7 meter readers either at installation or with these periodic  
8 checks, and that that's going to be an ongoing problem. And  
9 there needs to be an ongoing promise that it's going to get  
10 taken care of, that it's not going to get overlooked.

11 And that is -- that is a major concern for  
12 PACE 5-6 for a number of reasons. I mean, both as consumers,  
13 and protectors of other consumers, and also because it is the  
14 bargaining unit employees who go in and -- and are put in  
15 dangerous situations when those gas leaks turn into  
16 explosions. So there are -- you know, that is a major  
17 concern.

18 And I don't know whether that's something that  
19 this rate-making process is really the place to -- to address  
20 it, but we did think it needed to at least be raised here,  
21 and it did get raised here. And I think that it will get  
22 raised in the next -- by our people in the next rate-making  
23 process.

24 COMMISSIONER GAW: There is a complaint case  
25 that's been filed in regard to this issue in another case; is

1 that correct?

2 MS. SCHRODER: That's correct, yes, and my  
3 client has -- my client is very involved in that.

4 COMMISSIONER GAW: Okay. Anything else?

5 MS. SCHRODER: No.

6 COMMISSIONER GAW: Okay. Let me -- let me ask  
7 Mr. Pendergast a few questions in regard to this issue.

8 MR. PENDERGAST: Sure.

9 COMMISSIONER GAW: And you-all can stay at  
10 your desk as far as I'm concerned. I'm not trying to play  
11 musical chairs here. This -- Mr. Pendergast, give me a  
12 little more detail about what the Company's intentions are in  
13 regard to the meter readers in the next few years, and how --  
14 what role they play, and how many of them will continue on  
15 approximately, if you can disclose that.

16 MR. PENDERGAST: Certainly. I'll try and be  
17 as helpful as I can be. First of all, I don't want to have  
18 my earlier comments misconstrued as indicating that there  
19 will be no changes in meter reading force for two years.  
20 That certainly wasn't my intention. My intention was to say  
21 that we have a two-year process for implementing AMR. As we  
22 implement AMR, you know, it's not a situation where there's  
23 any immediate work force reduction on day 1, or day 10, or  
24 day 20. You know, it's a gradual thing, and a number of the  
25 meter readers will be there for a significant period of that

1 time.

2                   Even after AMR is implemented, there will be a  
3 number of meter readers who will be retained to do corrosion  
4 inspections. As I've indicated before, the Company has also  
5 indicated that they would make positions available in other  
6 parts of the Company available to meter readers who qualify,  
7 so that they could transfer to those particular positions.  
8 And at one point, actually offered to have that done on a  
9 seniority basis, which as we indicated, or as we had a  
10 discussion at the public hearing, was not accepted.

11                   I don't want to go into that, but you know,  
12 the Company has tried to be sensitive to -- to its workers,  
13 and making provisions where it can to provide those  
14 particular jobs when they are available. As you noted,  
15 Commissioner, there is a complaint case. We have addressed  
16 those safety concerns that have been raised by the union.  
17 Quite frankly, we don't think there is a safety concern.

18                   I think what they would have Laclede do is  
19 something that's not being done by any other local  
20 distribution company in the state. We will continue to abide  
21 by all regulations that are, in fact, safety regulations,  
22 including doing our corrosion inspections every three years,  
23 which I believe has already accelerated over the five-year  
24 requirement that you have under federal law.

25                   And you know, from our perspective, it would

1 be a fairly poor safety system if you were relying on  
2 somebody to walk into a house and look around every time  
3 somebody went ahead and changed service from one name to  
4 another. You know, what that would effectively mean is there  
5 are some houses where service is never changed, you never go  
6 in, and you never look. There's other houses you look seven  
7 or eight times in the course of three or four years,  
8 depending on how much customer turn there has been. And if  
9 you are going to design a safety system, I don't think you  
10 would design it that way.

11 In fact, the Commission hasn't designed it in  
12 that way, and to the extent there are applicable safety  
13 regulations, we will go ahead and fully comply with them. I  
14 hope that's helpful.

15 COMMISSIONER GAW: So, as far as numbers are  
16 concerned, you don't have a number for me?

17 MR. PENDERGAST: I think when it's all said  
18 and done, I think our expectation will be between 10 and 15  
19 people will be required to do the corrosion inspections. And  
20 as I've indicated before, there were already 30 of the meter  
21 readers out of the 90 were hired on a temporary basis with  
22 the idea in mind that AMR was going to be on the horizon.  
23 And we wanted to make it understood that they shouldn't view  
24 that as necessarily any kind of permanent position.

25 And you know, do we have enough positions in



1 customer service and construction and SAID to accommodate  
2 everyone else? We certainly have attrition there. It's a  
3 question of qualification, it's a question of quite frankly  
4 will some workers work records. As to whether or not a  
5 position will be hired, we certainly -- we're making a  
6 concerted effort to make positions available for people that  
7 are qualified and would -- would prefer to do it.

8                   Some would prefer to go ahead and retire, some  
9 would prefer to go ahead and take the severance package that  
10 has been offered, and to the extent that others want to go  
11 ahead and -- and take positions that are available in the  
12 company. We'll certainly work to help make that happen.

13                   COMMISSIONER GAW: So, Mr. Pendergast, there's  
14 about 30 meter readers you say that were hired as temporary  
15 workers. I think Mr. Schulte might have suggested some of  
16 those have been hired on a permanent basis already. So I  
17 don't know what those numbers might actually look like, and  
18 then there's an additional 60 that are impacted by this; is  
19 that correct?

20                   MR. PENDERGAST: That are potentially  
21 impacted. I don't know if -- how many of those 60 may have  
22 bid out to other jobs at this point or been placed in other  
23 positions. I don't know how many of those people are  
24 contemplating retiring as opposed to wanting to take another  
25 position with Laclede. I don't know how many of them are

1 contemplating taking the severance package that will be  
2 offered. I think it's probably a little too early to say  
3 that. I mean, one of the -- well, I think I'll leave it  
4 there.

5 COMMISSIONER GAW: Okay. How long -- what's  
6 the time frame on the meter replacements that's contemplated  
7 by the Company?

8 MR. PENDERGAST: As I understand it, it's  
9 basically a two-year program.

10 COMMISSIONER GAW: And within two years, all  
11 of the meters will be changed?

12 MR. PENDERGAST: That is our hope and  
13 expectation.

14 COMMISSIONER GAW: And who's doing the work on  
15 changing the meters?

16 MR. PENDERGAST: We have our own people who  
17 are assisting with that, and also the outside vendor.

18 COMMISSIONER GAW: Okay. So some of your own  
19 employees and the outside vendor. Who is the outside vendor  
20 again?

21 MR. PENDERGAST: Cellnet.

22 COMMISSIONER GAW: Cellnet. Where are they  
23 out of?

24 MR. PENDERGAST: Georgia.

25 COMMISSIONER GAW: Georgia. They bring their

1 own employees?

2 MR. PENDERGAST: I'm sure they do,  
3 Commissioner.

4 COMMISSIONER GAW: Okay. And do they then set  
5 up shop in St. Louis to actually do the meter reading after  
6 they're installed? How does that work? And I don't want to  
7 go too far here, I'm just wanting to understand how this  
8 impacts cost.

9 MR. PENDERGAST: Sure, I believe that's  
10 correct. And if you want to get into greater detail, I do  
11 have somebody here that can address it in greater detail.

12 COMMISSIONER GAW: Okay. But they have  
13 employees on the ground in St. Louis at some point in time?

14 MR. PENDERGAST: Yes. And in fact, I believe  
15 they already provide that same sort of service for Ameren  
16 Electric, and of course Missouri Gas Energy, I believe, went  
17 to this kind of technology a number of years ago as well.  
18 I'm not sure about KCP&L, but I'd be surprised if they don't.  
19 So this is really a technological improvement that Laclede is  
20 making that has a pretty established -- is a pretty  
21 established practice for other large utilities in the state  
22 of Missouri.

23 COMMISSIONER GAW: Who actually owns these  
24 meters once they're installed?

25 MR. PENDERGAST: We will continue to go ahead

1 and own the meters. As far as the automated reading device  
2 is concerned, Cellnet owns those.

3 COMMISSIONER GAW: Okay. So there's a device  
4 that's placed on the existing meters?

5 MR. PENDERGAST: Yes.

6 COMMISSIONER GAW: I see. And then is that  
7 read by some sort of radio signal or ...

8 MR. PENDERGAST: Yes.

9 COMMISSIONER GAW: Okay. So you have to drive  
10 around and pick it up?

11 MR. PENDERGAST: I don't know that a  
12 drive-around is necessary. I think it's sufficient to go  
13 ahead and be picked up without that.

14 COMMISSIONER GAW: Okay. And at what point in  
15 time, then, would -- so during this process of the two years,  
16 we'll go from -- are there any of them installed today?

17 MR. PENDERGAST: I believe we've already begun  
18 installing them, and we've tested it out as well.

19 COMMISSIONER GAW: Do you know what  
20 percentage, approximately?

21 MR. PENDERGAST: About 50,000 so far.

22 COMMISSIONER GAW: 50,000 out of how many?

23 MR. PENDERGAST: 630 to 650,000.

24 COMMISSIONER GAW: Okay.

25 JUDGE DIPPELL: Commissioner, just so the

1 record is clear, there is also a pending case dealing with a  
2 waiver of some of Laclede's tariff provisions regarding the  
3 meter replacement.

4 COMMISSIONER GAW: Is that in addition to the  
5 complaint case?

6 JUDGE DIPPELL: Yes.

7 COMMISSIONER GAW: Thank you. Okay. And  
8 this -- during that time frame, then, you're contemplating  
9 that the number of meter readers will be gradually brought  
10 down during that two years?

11 MR. PENDERGAST: That's correct.

12 COMMISSIONER GAW: And is it that two-year  
13 period that you were referring to earlier that the -- the  
14 total cost that you're incurring for -- for meter reading  
15 activity would actually be higher than it has been with --  
16 with no Cellnet involvement?

17 MR. PENDERGAST: That's correct.

18 COMMISSIONER GAW: Okay. And then after that  
19 two years, or at some point in time -- let's just use that as  
20 a demarkation point. After two years, do you expect it to be  
21 less than it was before Cellnet's involvement?

22 MR. PENDERGAST: We certainly have the  
23 expectation that over time, given the cost structure we have,  
24 that it will be less than would otherwise be the case.

25 COMMISSIONER GAW: Do you know about how much

1 less?

2 MR. PENDERGAST: What I can tell you is  
3 that -- and this is based on Laclede's cost, but what we will  
4 be paying for meter read is roughly equivalent for what it  
5 costs us to do it in-house right now, and that that cost to  
6 us will remain steady for some time. If we were to go into  
7 anymore detail, out of fairness to Cellnet, I would have to  
8 request that we do it in camera.

9 COMMISSIONER GAW: So you're really not  
10 contemplating any savings other than what the increasing cost  
11 might have been for continuing the current meter reading  
12 effort?

13 MR. PENDERGAST: That, plus we're hopeful that  
14 as you get away from estimated bills, that that will  
15 hopefully have some cost reduction up the road, and that, you  
16 know, there will be further -- there will be further reduced  
17 number of instances where the need to try and get into the  
18 customer's home to try and get a meter reading where you have  
19 situations where the customer can't make it, and you send  
20 somebody out and it turns out to be a futile exercise, we're  
21 hoping that that will also provide some benefits in the  
22 future as well.

23 COMMISSIONER GAW: But these -- the  
24 speculation about there being significant decreases in cost  
25 in regard to meter reading, you're telling me, would not be

1 accurate?

2 MR. PENDERGAST: Certainly not over the  
3 short-term. Four or five, six years up the road, I think  
4 this will be viewed as having produced some long-term  
5 savings, and those savings, I think, will be incorporated  
6 into whatever rate proceeding we may have at the time.

7 And the other point I will make, too,  
8 Commissioner, over the next couple of years and beyond, you  
9 know, even though there will not be any material savings  
10 associated with AMR over that transition period, we will  
11 continue to go ahead and have scheduled increases in our  
12 labor contracts associated with all of the construction  
13 people we have, all of the service people we have, as well as  
14 healthcare increases and that sort of thing. If there was a  
15 desire to capture what the impact of having a labor force is  
16 going to be over the next couple of years, I can assure you  
17 that impact is going to go ahead and be positive, and it's  
18 going to be a cost that, in some way, Laclede is going to  
19 have to find a way to absorb.

20 COMMISSIONER GAW: All right. I will -- I'll  
21 ask more questions on this in the other cases I'm sure, but I  
22 wanted to get an understanding of impact on -- on rates. Was  
23 there any -- since this is a black box settlement, so any  
24 contemplation of any of this change in regard to cost being  
25 taken into account in this particular settlement?

1 MR. PENDERGAST: No, I believe that everybody  
2 recognized that this is a future cost item, just like, you  
3 know, our August 2006 labor wage increase is a future cost  
4 item, and that I'm not sure that anybody thought there were  
5 any cost savings to go ahead and reflect, but since it is a  
6 future development like some of the other cost changes that  
7 we'll have in the future, that it wasn't something that was  
8 appropriate to take into consideration. I think, as  
9 Mr. Rackers said, it's certainly outside the test year. In  
10 any event, there would have been no savings in the  
11 foreseeable future to capture.

12 COMMISSIONER GAW: When you pay Cellnet, is  
13 that paid as a service? Do you pay -- what -- is that a  
14 monthly charge to Laclede?

15 MR. PENDERGAST: My understanding is it's on a  
16 read basis, so it's a charge per read.

17 COMMISSIONER GAW: And the installation of the  
18 equipment, the cost for that, is that built into their  
19 contract as a part of their --

20 MR. PENDERGAST: I believe, generally, that's  
21 true, although I think we incur some of our own costs to help  
22 make that happen.

23 COMMISSIONER GAW: I was going to get to that,  
24 too, but as far as their portion of installing those -- those  
25 devices, that ends up being part of whatever they're charging



1 you for meter reading?

2 MR. PENDERGAST: Yes.

3 COMMISSIONER GAW: Okay. And then you --  
4 whatever Laclede incurs in its cost, then that would be  
5 reflected in expenses that it has outgoing?

6 MR. PENDERGAST: Yes.

7 COMMISSIONER GAW: I think you said yes, and  
8 I'm not positive.

9 MR. PENDERGAST: Yes, I'm sorry.

10 COMMISSIONER GAW: It is -- just a second  
11 here. I have one more thing, I thought. Oh. Was there a --  
12 a reason why Laclede has never contemplated just moving  
13 meters outside?

14 MR. PENDERGAST: That issue has come up from  
15 time to time. In certain parts of our service territory,  
16 particularly in the more urban areas, there's really no place  
17 to move them. You know, if you were going to move them  
18 outside, you have to put them on the sidewalk or right next  
19 to the street, and obviously there would be some safety  
20 issues associated with that.

21 I think there's also some pressure reasons as  
22 to why moving the meters outside would not work, and you  
23 know, there is a significant cost associated with removing  
24 those and then reinstalling them outside that would also  
25 probably be prohibitive in a number of circumstances.

1 Certainly if, you know, there is a way to do it, and it's  
2 cost effective to do it, we're always open to doing that, but  
3 we just have some natural limitations on our ability to do  
4 that.

5                   COMMISSIONER GAW: And Laclede did not -- did  
6 not look at the possibility of utilizing its own employees to  
7 do some sort of an automated system that would also involve  
8 them doing safety checks?

9                   MR. PENDERGAST: You know, this was a long  
10 process before we finally reached an agreement to implement  
11 this. We were talking about it for a number of years. We  
12 were exploring various options for a number of years. We had  
13 one firm that we thought would -- would provide the best  
14 product. That wasn't successful in getting that  
15 accomplished, and we finally, after long negotiations,  
16 reached an agreement with Cellnet.

17                   I think everybody feels comfortable that we  
18 explored all the options in great detail, and that we  
19 probably learned from what others had done, and that this was  
20 the most cost-effective practical system for our customers  
21 over the long-term that we could -- we could come up with.  
22 And I would also indicate that, you know, obviously any  
23 impact on jobs is something that's of significance, and we're  
24 sensitive to that, and I think the Company has tried to go  
25 the extra mile to accommodate what's happening here.

1 I hope we don't lose sight of the fact,  
2 though, that compared to most other utilities in the state,  
3 probably in the state and other areas, Laclede uses more of  
4 its in-house people to do various type of construction,  
5 whether it's construction work, whether maintenance work,  
6 than virtually any other utility than I'm aware of. And  
7 that's not going to go ahead and -- at least I'm not aware of  
8 any significant changes planned in that over the upcoming  
9 years.

10 So while there's always -- technology brings  
11 some disruptions from the standpoint of having a home-grown  
12 work force, if you will, from Missouri, I think Laclede ranks  
13 pretty high at the top as far as using its own employees to  
14 do that kind of work.

15 COMMISSIONER GAW: I hate to see you going  
16 down.

17 MR. PENDERGAST: I understand.

18 COMMISSIONER GAW: And does that mean that  
19 you're -- maybe I'm confused, but does that mean that you're  
20 not using any contractors from outside of the state to do any  
21 of the replacements on the lines?

22 MR. PENDERGAST: We had some catch-up work to  
23 do where we needed to go ahead, and I think briefly, use some  
24 outside folks to -- to do a portion of our copper service  
25 replacements during a specific period of time. We had some

1 airport work that involved some massive facilities that  
2 needed to be done that we needed to use some outside folks to  
3 do, but by and large --

4 COMMISSIONER GAW: You stopped that now?

5 MR. PENDERGAST: I believe that's, yeah, been  
6 completed. I'm not sure, I can check on it for you.

7 COMMISSIONER GAW: Would you let me know  
8 sometime soon?

9 MR. PENDERGAST: I will. I will. But by and  
10 large, the vast majority of our work is still done by Laclede  
11 employees.

12 COMMISSIONER GAW: Okay. I will pass to see  
13 if anyone else has any questions on this topic, so if they  
14 need to leave, they can.

15 JUDGE DIPPELL: Commissioner Clayton, did you  
16 have any questions for the union?

17 COMMISSIONER CLAYTON: I'm satisfied.

18 JUDGE DIPPELL: Commissioner Applling? Since  
19 the Chairman isn't available right now, I will ask you to  
20 remain until he's had an opportunity to ask any questions he  
21 may have.

22 MR. PENDERGAST: Your Honor, if I could be  
23 permitted, just very quickly, to be responsive to a few of  
24 the other issues that were raised, and I don't want to  
25 belabor any of the points, but during the public hearings and

1 today, there were some comments made about the ratio of  
2 management employees to union employees. And I'd just like  
3 to clarify that if you actually look at what those ratios  
4 are, whether they're in the construction department, the  
5 meter reading department, first line supervisors, it ranges  
6 from one to seven or eight, to one to thirteen.

7           If you put management in there that are  
8 directly related to that, it's still one to five, one to  
9 eight, and I think part of the confusion is that when you  
10 look at management versus contract, everybody that is not a  
11 contract employee has been put into one category, and that  
12 includes secretaries, it includes information systems people,  
13 it includes folks that are doing what needs to be done to run  
14 any modern company. They're not just all standing there  
15 supervising a few people in the field. So I just wanted to  
16 go ahead and make that point clear.

17           And secondly, on the management bonuses, they  
18 have been specifically excluded from rates in this case  
19 pursuant to the stipulation and agreement. I do want to say  
20 that from our perspective, we think the management bonus  
21 process that's been developed by Laclede over the last couple  
22 of years is a good thing, that it is designed to go ahead and  
23 make people accountable for producing results, both for the  
24 customer as well as the shareholder, and that it is a  
25 worthwhile endeavor that provides benefits to everybody.

1                   Nonetheless, we have agreed, for purposes of  
2 this case, to go ahead and exclude that from rates. So to  
3 the extent anybody has a concern about ratepayers paying for  
4 them, that concern isn't applicable in this case. Thank you.

5                   JUDGE DIPPELL: Ms. Schroder, did you have  
6 some response that you would like to make to any of the  
7 comments?

8                   MS. SCHRODER: Yes. Yes, Mr. Pendergast  
9 raised an issue early on, I guess, in his response to --

10                  JUDGE DIPPELL: Can you just turn that  
11 microphone up? There you go.

12                  MS. SCHRODER: Okay. Sorry. Can you hear me  
13 now?

14                  JUDGE DIPPELL: You can speak up a little bit,  
15 they can't hear you in the back.

16                  MS. SCHRODER: Okay. Mr. Pendergast raised an  
17 issue about the number of meter readers that were losing  
18 their jobs due to the AMR process. I had not raised that  
19 issue earlier because I understand that it does not have  
20 relevance to this rate-making proceeding, but I would like  
21 just a few seconds to address the issue because he did  
22 address it, and I feel like I can't just leave it alone.

23                  As Mr. Pendergast pointed out, there are about  
24 90 bargaining unit employees who are meter readers who will  
25 be losing their jobs, eventually, over the AMR

1 implementation. Of those, the Company offered five permanent  
2 jobs for those people, and then the other positions that they  
3 intimated would be available for some of those 90 people were  
4 positions that were not yet open, and they would just have to  
5 become open through attrition or whatever, and for which most  
6 or all of meter readers are not currently qualified.

7                   The meter reading position is -- is at a level  
8 in the bargaining unit that requires very little in the way  
9 of pre-qualifications, and so any of the positions that they  
10 were moving to, except, I believe, the laborer's position, is  
11 going to require additional qualifications. So that was all  
12 I wanted to address there. Thank you.

13                   JUDGE DIPPELL: Thank you. I don't believe  
14 that there are any other --oh, I'm sorry. Commissioner  
15 Clayton?

16                   COMMISSIONER CLAYTON: I changed my mind.  
17 Just for clarification, is there another proceeding that is  
18 actually taking up these, I guess, allegations or concerns,  
19 Ms. Schroder?

20                   MS. SCHRODER: My understanding today is that,  
21 yes, there are. There are two. There's a complaint  
22 proceeding that's taking up the safety allegations, and that  
23 there is a proceeding, and I don't know exactly how it's  
24 characterized, but it's dealing specifically with AMR, a  
25 waiver.

1 JUDGE DIPPELL: Commissioner, there's a  
2 proceeding where Laclede has asked for a waiver of some of  
3 its tariff provisions in the replacement of the meters  
4 dealing with the implementation of its AMR. Both of those  
5 are currently pending.

6 COMMISSIONER CLAYTON: Ms. Schroder, are you  
7 the attorney for PACE in those two matters?

8 MS. SCHRODER: Actually, Julia Englehardt is,  
9 and we have intervened in the complaint process, and I  
10 believe we have also -- yes, we have intervened in the -- the  
11 tariff waiver process.

12 JUDGE DIPPELL: Let me just clarify that I  
13 believe the complaint is actually filed by PACE.

14 MS. SCHRODER: Yes, I'm sorry.

15 JUDGE DIPPELL: And that the intervention  
16 request in the waiver has not yet been ruled on.

17 MS. SCHRODER: Okay.

18 COMMISSIONER CLAYTON: Judge, I don't know if  
19 you're answering these questions, I just wanted to know where  
20 they were in the process. Have they just been filed or --

21 JUDGE DIPPELL: No.

22 COMMISSIONER CLAYTON: -- do you know that,  
23 Ms. Schroder?

24 MS. SCHRODER: I don't know that.

25 JUDGE DIPPELL: Both of those cases are my



1 cases, Commissioner. There has been a request for  
2 intervention, which is contested in the waiver case. There  
3 has been a motion to dismiss, I believe, the complaint. That  
4 has not -- neither of those have been ruled on.

5 COMMISSIONER CLAYTON: Okay. Those are both  
6 yours?

7 JUDGE DIPPELL: Yes.

8 COMMISSIONER CLAYTON: I don't think I have  
9 any other questions. Thank you, Ms. Schroder.

10 MS. SCHRODER: Thank you.

11 JUDGE DIPPELL: Commissioner Gaw?

12 COMMISSIONER GAW: I have just a couple more.  
13 I will ask Staff this question. Earlier there was some  
14 reference to this issue about whether or not Laclede might or  
15 might not be management top heavy, and my question isn't  
16 whether Staff would use it one way or the other. My question  
17 is this: Whether or not it would be appropriate in a rate  
18 case for there to be a -- some amount of monies paid for  
19 salary, et cetera, to be disallowed because of it being  
20 imprudent? And the reason for my question is to ask whether  
21 or not there is a way for someone to challenge the question  
22 of -- of, you know, the amount of money being expended for  
23 management. Whoever wants to answer that question.

24 MR. MEYER: I believe Mr. Rackers would like  
25 to address that for the analysis that Staff does in that

1 situation.

2 COMMISSIONER GAW: I don't want to spend a lot  
3 of time on it.

4 JUDGE DIPPELL: And Mr. Rackers has previously  
5 been sworn.

6 MR. RACKERS: I think that's certainly an  
7 adjustment that could be made in a rate case, and can be  
8 addressed if we found that it was imprudent to have that  
9 ratio.

10 COMMISSIONER GAW: Okay.

11 MR. DANDINO: And Public Counsel would also  
12 say that management salaries, as any cost of doing business,  
13 is subject to objection by any party, and whether it's a  
14 reasonable and prudent.

15 COMMISSIONER GAW: And I would assume that  
16 from the Company's standpoint, that if some allegation like  
17 that were made, not only would there be an argument that it  
18 wasn't, but also that it might be something within the  
19 purview of the Company to make decisions about things of that  
20 sort. I'm not sure, but if you want to -- if you want to say  
21 something.

22 MR. PENDERGAST: I mean, it's always difficult  
23 to go ahead and say where the dividing line is. I think,  
24 obviously, if the Commission went so far as to say, this is  
25 the ratio of management to union employees that you should

1 have, and this is how they should interact with those  
2 employees, I mean, you might, at some point, get to the line  
3 where you're infringing in an inappropriate way with  
4 management prerogatives.

5                   On the other hand, I don't disagree with  
6 either Staff or Public Counsel that if -- if the Company is  
7 incurring expensive costs that it cannot justify, that that's  
8 a legitimate area for review, and potential adjustment.  
9 Obviously I don't believe that Laclede has -- has that  
10 particular problem.

11                   COMMISSIONER GAW: Okay. I understand your  
12 position. And finally, on a lighter note, Mr. Pendergast, I  
13 missed part of your earlier quote, and all I got was  
14 something like "I don't want to belabor". Did I miss the  
15 rest of it?

16                   MR. PENDERGAST: No pun intended.

17                   JUDGE DIPPELL: Okay. I believe that's all of  
18 the Commission questions regarding -- regarding the union  
19 issues, so Ms. Schroder, if you or your client need to leave,  
20 you may do so without fear of penalty from the Commission.

21                   MS. SCHRODER: Thank you very much.

22                   JUDGE DIPPELL: Okay. We can move on, then.  
23 I will say that the Commission has a special agenda planned  
24 for -- beginning at noon.

25                   CHAIRMAN DAVIS: Uh-huh, or roughly

1 thereabouts.

2 JUDGE DIPPELL: So we will go until noon, and  
3 then we will break for a long lunch or until the Commission  
4 has a chance to do its agenda. So let's go ahead and  
5 continue, then, and I believe that Commissioner Clayton had  
6 another question for Ms. Fred; is that correct?

7 COMMISSIONER CLAYTON: No, just don't --  
8 that's okay.

9 JUDGE DIPPELL: Okay. Did you have other  
10 questions for Staff that hadn't been answered, Commissioner  
11 Clayton?

12 COMMISSIONER CLAYTON: Don't worry about it.  
13 Thank you.

14 JUDGE DIPPELL: Commissioner Gaw, did you have  
15 additional questions?

16 COMMISSIONER GAW: I do, but I will take quite  
17 a bit of time to get through them, and I'd -- rather than  
18 keep other people down here, if they have things, otherwise I  
19 can go ahead.

20 JUDGE DIPPELL: Commissioner Appling, did you  
21 have any questions?

22 COMMISSIONER APPLING: No questions at this  
23 time, Judge.

24 CHAIRMAN DAVIS: Questions for who?

25 JUDGE DIPPELL: For anyone. Did you have

1 questions that you needed answered? This is the --

2 CHAIRMAN DAVIS: I'm drawing a blank right  
3 now, Judge. I'm sure I'll have some more later.

4 JUDGE DIPPELL: All right.

5 COMMISSIONER GAW: Do you want me to go ahead?

6 JUDGE DIPPELL: And as we get to a topic, you  
7 know, at a good stopping point, we'll ask if there are other  
8 Commission questions for that topic.

9 COMMISSIONER GAW: Sure, and feel free to  
10 interrupt me whenever you want to. Let me ask -- I want to  
11 go back to the first question Commissioner Clayton asked, I  
12 think -- and that is just to make sure I'm following the  
13 total amount of increase in base rates is somewhere around  
14 8.5 million. Is that accurate?

15 MR. PENDERGAST: That --

16 COMMISSIONER GAW: Whoever wants to go.

17 MR. MEYER: The total amount of increase in  
18 base rates is 10.5 million.

19 COMMISSIONER GAW: Okay. And so -- then there  
20 is -- okay. So -- and then I'm reducing this by 6.1, the  
21 ISRS?

22 MR. MEYER: Correct, because that is already  
23 essentially in place.

24 COMMISSIONER GAW: Okay. And then I am  
25 increasing the amount that will be considered a part of the

1 PGA by about 4.1 million.

2 MR. MEYER: Correct.

3 COMMISSIONER GAW: So the net impact on all  
4 rates, including the PGA, if the PGA were to remain the same,  
5 except for the 4.1 million is the 8.5.

6 MR. MEYER: Yes.

7 COMMISSIONER GAW: Is that correct?

8 MR. PENDERGAST: Yes.

9 COMMISSIONER GAW: And again, what is in that  
10 4.1 million? Whoever is easiest to come up with an answer  
11 the quickest.

12 MR. PENDERGAST: Those are inventory costs  
13 associated with the natural gas that we have in storage,  
14 basically carrying costs as well as our propane storage  
15 supplies.

16 COMMISSIONER GAW: And how's that been handled  
17 in the past?

18 MR. PENDERGAST: Well, it depends on how far  
19 you want to go back.

20 COMMISSIONER GAW: I see.

21 MR. PENDERGAST: In the past, when we bought  
22 all of our gas supplies from interstate pipelines, most, if  
23 not all of it, at least the part that's associated with  
24 pipeline storage, was bundled up and included in whatever the  
25 sales rate was that the interstate pipeline charged the

1 utility.

2                   After 636 and transportation came, those costs  
3 were included for a while up until this point in base rates,  
4 and what this would do is have those costs recovered as they  
5 used to be, or at least a significant portion of them were,  
6 through the PGA mechanism in the future. And once again, one  
7 of the reasons for doing that, from our perspective, is that  
8 you will go ahead and know what those costs are. You will  
9 not be charging more or less than what they are, and they're  
10 about as intricately related to gas costs as they're already  
11 recovered through the PGA, as just about anything else could  
12 be.

13                   COMMISSIONER GAW: Okay. And so that 4.1  
14 million in the PGA would be something that will float  
15 according to whatever the costs are, correct?

16                   MR. PENDERGAST: Yes.

17                   COMMISSIONER GAW: If it were in the base  
18 rates themselves, then that locks in from rate case to rate  
19 case?

20                   MR. PENDERGAST: That's correct.

21                   COMMISSIONER GAW: Okay. This -- what's the  
22 issue on the taxes in this category? Can somebody explain  
23 that further? Let me see if I can find it. And maybe that's  
24 more on Page 3. That may just be in regard to the revenue  
25 requirement. Revenue amounts referenced in this paragraph

1 are exclusive of any applicable license, occupation,  
2 franchise, gross receipts, taxes, or other similar tax or  
3 taxes. Sorry.

4 COURT REPORTER: That's okay.

5 COMMISSIONER GAW: What's that about there?

6 MR. PENDERGAST: I think, Commissioner, that's  
7 just pretty much standard language that is designed to  
8 reflect the fact that those taxes are sort of add-on taxes by  
9 local governmental units, or even the state, and that this  
10 rate increase is not attempting to go ahead and incorporate  
11 or reflect those.

12 COMMISSIONER GAW: Okay. Thank you. And then  
13 let me -- I'm going to go to another topic with you now. On  
14 the -- the credit scoring issue, and I'll probably talk to  
15 Public Counsel about this to some degree. First of all,  
16 either Staff or Public Counsel, is this credit scoring  
17 currently used by other utilities in Missouri?

18 MS. MEISENHEIMER: It is used in telephones,  
19 and telecommunications, it is used.

20 COMMISSIONER GAW: Any other utilities?

21 MS. MEISENHEIMER: Not to my knowledge.

22 COMMISSIONER GAW: Okay. And Public Counsel's  
23 position on this issue, as a matter of policy?

24 MS. MEISENHEIMER: As a matter of policy, we  
25 have some significant concerns regarding the methods used for



1 credit scoring, and in part, this settlement defers -- defers  
2 that issue until the Commission has had a chance to consider  
3 it in a rulemaking. There are a number of variables that  
4 have to be determined and set.

5           Some are discretionary, and so I think that  
6 the provisions of the stipulation allow the Staff and Public  
7 Counsel to review the Company's proposal with respect to  
8 credit scoring before it's implemented, and that would  
9 obviously give us an opportunity to raise them before the  
10 Commission if we have concerns about the -- the method or  
11 whatever choice variables the Company makes in terms of  
12 credit scoring.

13           COMMISSIONER GAW: Does Public Counsel think  
14 it's a good idea to do this in general?

15           MS. MEISENHEIMER: We have opposed -- I worked  
16 on the case in the telephone area that I'm familiar with with  
17 respect to credit scoring, and we opposed that; however, in  
18 considering all aspects of this case, the Commission has, in  
19 the past, approved credit scoring using a nationally  
20 recognized credit bureau, and credit report -- reporting  
21 agency, and so there is obviously an issue of risk involved.  
22 Also, to some extent, if it allows Laclede to better target  
23 deposits to customers that are more of a risk, that may prove  
24 the benefit to the customers who would otherwise pick up the  
25 tab for uncollectible's.

1                   COMMISSIONER GAW: So who -- does anything  
2 happen until you bring this agreement back, or there's a  
3 rulemaking that's finalized with regard to use of credit  
4 reports? And whoever wants to answer that.

5                   MR. PENDERGAST: I think we need to go ahead  
6 and either satisfy the Staff and Public Counsel, that  
7 whatever method we develop to implement credit scoring is  
8 acceptable, in which case we would notify you that we have.  
9 Or if we can't reach agreement, then it will come before you  
10 to go ahead and be resolved.

11                   And from our perspective, Commissioner, this  
12 credit scoring, you know, we would really prefer not to  
13 collect any more deposits than we have to, and the reason  
14 that is the case is that the amount we pay on customer  
15 deposits is in excess of what our short-term money costs are.  
16 So in essence, it costs us money to go ahead and collect and  
17 pay on a deposit compared to what our other financing sources  
18 are.

19                   On the other hand, you do want to collect a  
20 deposit if you think that you're going to have a customer  
21 that's going to leave you with a bad debt so that you, and  
22 ultimately your other customers, don't have to pay for that.  
23 Our analysis shows that we will probably collect fewer  
24 deposits from fewer customers if we use this credit scoring  
25 than if we continue to use kind of the meat cleaver

1 one-size-fits-all approach that we use today. And it will be  
2 collected from those customers that impose the greatest risk.

3                   At the same time, because of the way the cold  
4 weather rule works and that sort of thing, there will still  
5 be special consideration given to those who have a very  
6 difficult time paying their current bill, let alone a  
7 deposit. So we think that if we can reach agreement on it,  
8 and we can satisfy Staff and Public Counsel and the  
9 Commission, that it's a reasonable way to go, that it will  
10 result in fewer deposits and more effective deposit  
11 collections.

12                   COMMISSIONER GAW: Okay. And you were  
13 explaining earlier today, Mr. Pendergast, about the -- who  
14 actually is going to have a credit report run on them. And  
15 did you -- are we distinguishing between owners and renters?  
16 Did I misunderstand that?

17                   MR. PENDERGAST: Yeah. Well, right now, we  
18 are entitled to collect deposits from all renters, and that  
19 is something that was approved sometime back, basically on  
20 the theory that that's where the majority of our bad debts  
21 comes from.

22                   COMMISSIONER GAW: Okay.

23                   MR. PENDERGAST: Then there is other criteria  
24 for people that go ahead and own a home. If we are able to  
25 get credit scoring implemented, then that would be applicable

1 to both renters as well as people that own their own home,  
2 and that would be the criteria that would be used for  
3 purposes of determining whether a deposit is required.

4 COMMISSIONER GAW: So you might not collect  
5 from renters -- from some renters that you currently collect  
6 from?

7 MR. PENDERGAST: Absolutely. We're sure.

8 COMMISSIONER GAW: You might collect from some  
9 homeowners that you currently do not collect from?

10 MR. PENDERGAST: That would be correct.

11 COMMISSIONER GAW: Okay. I think I'm  
12 following that. Now, the -- who pays for the credit report?

13 MR. PENDERGAST: Well, assuming we get the  
14 system up and running, everybody's agreeable to it, we will  
15 go ahead and pay for that. And it's not -- I don't believe a  
16 credit report, it's more like you get a credit score. You  
17 call these folks up, and it's not even a credit score. It's  
18 basically you establish some criteria beforehand, you know.  
19 You've got to have a credit score of 700 or 650, or whatever  
20 it is, and you either pass or fail. And you simply send an  
21 inquiry in determining whether or not this particular  
22 customer passes or fails, and it's based on that that you  
23 make a determination as to whether a deposit would be  
24 required.

25 COMMISSIONER GAW: Okay. Go ahead.

1 MS. MEISENHEIMER: And my understanding is  
2 that the Company will only know whether a customer passes or  
3 fails. They would not know the customer's particular score.

4 COMMISSIONER GAW: I see. But this  
5 establishment of the criteria will be done by your-all's  
6 discussions?

7 MS. MEISENHEIMER: Well, the Company will  
8 propose something, and the Staff and Public Counsel will  
9 review it.

10 COMMISSIONER GAW: I see.

11 MS. MEISENHEIMER: I also -- if you're  
12 interested, I'd like to supplement what I told you regarding  
13 companies that currently use credit scoring.

14 COMMISSIONER GAW: Okay.

15 MS. MEISENHEIMER: With respect to the use of  
16 it in telecommunications, that was approved for a local  
17 telephone company; however, it was with respect to use of  
18 toll calling. At that time, that local exchange carrier  
19 provided toll calling, and the program limited a customer's  
20 bucket of toll minutes. It was not applied to their basic  
21 local service.

22 COMMISSIONER GAW: Okay. Thank you for that.  
23 So this is -- we're breaking some new ground here.

24 MS. MEISENHEIMER: It is different in that it  
25 is not the most basic service offered to the customer.

1                   COMMISSIONER GAW: Okay. All right. Will  
2 customers be able to contest a finding?

3                   MR. PENDERGAST: I think a customer's always  
4 free, if we have requested a deposit and for some reason they  
5 disagree, that that's an appropriate thing to bring that to  
6 the consumer services department's attention, and if they  
7 don't receive a satisfactory response from them and the  
8 utility, to file a complaint with the Commission.

9                   COMMISSIONER GAW: They will know what the  
10 criteria are? That will be publicly available, I assume.

11                  MR. PENDERGAST: I think we're going to try  
12 and be as specific as we can be on what that criteria is.  
13 You know, it's always a question of, do you want to lock into  
14 a tariff based on something they can change. But  
15 essentially, what we're doing is trying to go ahead and  
16 sample, see what kind of credit scores have correlated with  
17 nonpayment in the past, so that we have a basis for saying,  
18 if you have a credit score below this level, you're more  
19 likely, based on actual experience, not to go ahead and pay  
20 your bill, and use that as a criteria for determining what  
21 kind of credit scores are going to be.

22                  COMMISSIONER GAW: And we're talking about  
23 just the individual that -- that's signing up, or are we  
24 talking about others in the household who have their -- have  
25 credit reports run?

1                   MR. PENDERGAST: Oh, I think we're talking  
2 about the applicant for service.

3                   COMMISSIONER GAW: Okay. Public Counsel?

4                   MS. MEISENHEIMER: First of all, I firmly  
5 believe that that information regarding the criteria should  
6 be publicly available information.

7                   COMMISSIONER GAW: Sure you would.

8                   MS. MEISENHEIMER: Second of all, I would  
9 certainly hope that a customer's only recourse to whether  
10 they pay a deposit is not to go chasing down a credit agency  
11 to figure out what -- why their credit score is what it is.  
12 I hope there will be a more local opportunity for them, and  
13 so in terms of appealing, perhaps, to the Company, or perhaps  
14 to ultimately the Commission regarding the application of a  
15 deposit.

16                   And then I had a comment on the last area that  
17 you asked a question about, and it's escaping me at the  
18 moment.

19                   COMMISSIONER GAW: It's escaping me, too. So  
20 maybe you'll think of it in a minute. Let me ask -- let me  
21 ask this question: The question -- the -- the four times the  
22 average monthly bill change, do any of the other utilities  
23 have that currently?

24                   MR. MEYER: We do not believe they do.

25                   COMMISSIONER GAW: Don't believe they do?

1 MR. MEYER: In other words, no.

2 COMMISSIONER GAW: Thank you. And for  
3 residential ratepayers, is there -- I know this is extremely  
4 difficult, but is there some way you can get me some sort of  
5 an average range we'd be talking about for someone to be on a  
6 deposit? What kind of money that might be? Just a general  
7 range of possibility, probability? I'm sure there was an  
8 average bill calculated in order to determine how much of a  
9 rate increase this was going to be. Maybe that would be a  
10 number that someone could work from.

11 MR. PENDERGAST: Well, if you were to assume  
12 that a customer had an annual bill of \$1,200, you know,  
13 depending on where gas prices are and --

14 COMMISSIONER GAW: Right.

15 MR. PENDERGAST: -- and other factors, that  
16 can vary, but that would, I guess, result in a deposit of  
17 \$400.

18 MS. MEISENHEIMER: Commissioner Gaw, I'm able  
19 now to remember the other point.

20 COMMISSIONER GAW: Sure.

21 MS. MEISENHEIMER: With respect to you asked  
22 whether the credit score would apply to only the customer or  
23 to persons in the household.

24 COMMISSIONER GAW: Yes.

25 MS. MEISENHEIMER: And my understanding, as



1 customer is currently defined, it should only apply to the  
2 customer that pays for service --

3 COMMISSIONER GAW: Okay.

4 MS. MEISENHEIMER: -- that the customer that  
5 the service is billed to. However, in the event that the  
6 Chapter 13 rules were altered to change the definition of  
7 customer, then potentially, it could expand to others in the  
8 household, and we would certainly have a concern about that.

9 COMMISSIONER GAW: All right. Thank you for  
10 that verification. Do you have anything on the average -- do  
11 you agree with Mr. Pendergast's assessment, about \$400 for if  
12 you just average what everyone's residential bills are?

13 MS. MEISENHEIMER: Yeah, I -- at this moment,  
14 I don't dispute that.

15 COMMISSIONER GAW: Staff?

16 MR. MEYER: Based on his assumptions, we have  
17 no dispute with that.

18 COMMISSIONER GAW: So they pay -- they would  
19 pay up-front -- if they were average average, they would pay  
20 \$400 up-front if they had to pay a deposit?

21 MS. MEISENHEIMER: They would pay in  
22 installments, and --

23 MR. PENDERGAST: Yeah, I think it's either  
24 three or six, depending on what time of year it is, and these  
25 four times the average, I think, are for customers that have

1 had poor pay experiences with Laclede Gas Company. I believe  
2 for new customers, we're talking two times the average; is  
3 that correct?

4 So -- and once again, four times the average,  
5 based on our experience, is going to be a lower deposit than  
6 two times the highest is under our current approach, so ...

7 COMMISSIONER GAW: Do you know what that  
8 number would be if you were dealing with averages.

9 MR. PENDERGAST: For example, I think if we  
10 were talking about instead of the 400, more like 430.

11 COMMISSIONER GAW: Okay.

12 MR. PENDERGAST: So it's not significantly  
13 lower, but it is lower.

14 MS. MEISENHEIMER: And compared to the  
15 Company's originally -- or original filing where they sought  
16 prepaid deposits, they have -- they are -- in the  
17 stipulation, there are not prepaid deposits.

18 COMMISSIONER GAW: All right. So the deposits  
19 are paid when the bill comes due? Or is any of the deposits  
20 paid up-front at the time of institution of service.

21 MR. PENDERGAST: I think one-third, and then  
22 the customer has the option of paying the rest over two  
23 additional installments or more, depending on whether it's a  
24 winter period or not.

25 COMMISSIONER GAW: Okay. So \$133 or so if

1 they were an average average customer. Would that be about  
2 right?

3 MR. PENDERGAST: It sounds about right.

4 COMMISSIONER GAW: Okay. I'll leave it up to  
5 you, if you want me to break now.

6 JUDGE DIPPELL: We can either break now for  
7 lunch, Commissioners --

8 CHAIRMAN DAVIS: Why don't we go ahead and  
9 break, because I think the Commissioners are going to need  
10 some time to get ready for the agenda?

11 MR. SCHAEFFER: Judge, before we do that, I  
12 just need to ask -- I don't know if the Commission's going to  
13 have any questions on the low income weatherization and  
14 efficiency rebate programs. If not, we would ask to be  
15 excused.

16 JUDGE DIPPELL: I believe there may be some  
17 questions, Mr. Schaefer.

18 CHAIRMAN DAVIS: Why don't we have them come  
19 back at 1:15 and see -- and try to go to that and get him out  
20 of here.

21 JUDGE DIPPELL: We'll take that up immediately  
22 after.

23 MR. SCHAEFFER: Thank you very much for doing  
24 that.

25 JUDGE DIPPELL: I apologize. I should have

1 probably asked earlier. What we'll do, then, is we're going  
2 to break for lunch until 1:15. And we can resume the  
3 questioning then. Thank you. We can go off the record.

4 (A BREAK WAS HELD.)

5 JUDGE DIPPELL: Let's go ahead and get started  
6 again. Okay. We'll go ahead and go back on the record.  
7 Okay. We've returned from our break, and we're ready to  
8 resume questions. And Commissioner Gaw, did you have some  
9 questions regarding the low income energy assistance  
10 weatherization, and so forth, parts of the stipulation?

11 COMMISSIONER GAW: A few.

12 JUDGE DIPPELL: Do you want to begin there?

13 COMMISSIONER GAW: Why don't we try that. If  
14 somebody could, maybe counsel for DNR might be the best place  
15 to go with this, just give me an understanding of how the --  
16 how this energy efficiency program works and how it compares  
17 to others that are currently in existence.

18 MR. SCHAEFER: Commissioner, I'm -- I'm  
19 relatively new to the department. I brought Ms. Brenda  
20 Wilbers with me, and I think that she can answer those  
21 questions in a much more thorough way than I possibly could.

22 (THE WITNESS WAS SWORN.)

23 JUDGE DIPPELL: If you would give us your name  
24 and state, you know, what your position is.

25 MS. WILBERS: My name is Brenda Wilbers, and

1 I'm the director of energy policy and analysis within the  
2 Energy Center, which is in Department of Natural Resources.

3 JUDGE DIPPELL: Thank you.

4 COMMISSIONER GAW: Thank you, Judge.

5 QUESTIONS BY COMMISSIONER GAW:

6 Q. Ms. Wilbers, I think you heard my question --

7 A. Yes.

8 Q. -- or questions. Can you give me some  
9 background?

10 A. Well, the low income weatherization assistance  
11 program is one that is -- has been administered by the  
12 Department of Natural Resources since the mid-70's. We do  
13 get federal appropriations for that every year, and we work  
14 with 12 to 14 local agencies throughout the state to actually  
15 provide the services to low income, elderly, and disabled  
16 households. So that is an ongoing program.

17 Q. Okay. So why don't you list off the  
18 components of this stipulation first, just very generally,  
19 that DNR contributed to.

20 A. Okay. Weatherization assistance program,  
21 Laclede had, in previous rate cases, committed to \$300,000  
22 per year for weatherization, and in this case, there's an  
23 addition \$200,000 that's being contributed to that program,  
24 so it comes to a total of \$500,000 per year.

25 Q. Okay. And how is that utilized?

1           A.       That will be distributed to the six local  
2 agencies that do weatherization in Laclede service territory.

3           Q.       Those agencies are what kind of agencies?

4           A.       Those are community action agencies.

5           Q.       All right.  And have they been handling funds  
6 in the past?

7           A.       Yes.

8           Q.       All right.  And the track record there has  
9 been -- has been reviewed?

10          A.       Yes, we continually monitor implementation.  
11 We regularly assess and audit their books.

12          Q.       All right.  And your findings have been in  
13 regard to this program?

14          A.       They've been very good.  In this area, in the  
15 St. Louis area, the results of weatherization, there's a  
16 savings to investment ratio for every dollar spent on the  
17 program, \$2.50 is the average value.

18          Q.       And are those figures -- what kinds of things  
19 are done with the money?

20          A.       Well, an energy audit is -- is the first step.  
21 It's done -- well, they have to meet eligibility  
22 requirements, and then --

23          Q.       The eligibility requirements are generally  
24 what kinds of things?  Income?

25          A.       Income, yes.

1 Q. Anything else? Household -- does the  
2 residents have to -- I guess that's what you were getting to.  
3 Your doing an energy audit is about assessing the actual  
4 structure?

5 A. Yes.

6 Q. Okay. Go ahead, I interrupted you.

7 A. So they will do this energy audit, which is  
8 standardized audit from the US Department of Energy, and it  
9 will identify, based on inputs that are put in by the expert  
10 doing the audit, it will identify cost effective measures to  
11 be installed at that facility, at that home, so --

12 Q. Okay.

13 A. -- that's how the measures are chosen.

14 Q. And what -- and there's a criteria -- you have  
15 to meet a certain standard before you qualify into the energy  
16 audit portion of the test? You have to -- the residents, the  
17 house has to have some sort of a need in regard to energy  
18 improvements that could be demonstrated?

19 A. Yeah, the energy audit will identify what  
20 those measures are.

21 Q. I mean, if you had a very efficient house you  
22 did an energy audit on, and said there wasn't much  
23 incrementally that could be done, what would be the result?

24 A. Then we would probably walk away from that  
25 home, because they wouldn't need the weatherization

1 assistance.

2 Q. Okay. So is there some sort of objective way  
3 to determine that, or is it a subjective thing?

4 A. It's an objective way of determining it. It's  
5 a computerized audit program, and they -- they will assess  
6 the home, building structure, and the appliances that are in  
7 it, the heating systems, and input that into this model.

8 Q. Okay. All right. And then what occurs after  
9 that?

10 A. Then measures are identified, and there is  
11 a -- a maximum that can be spent on each household.

12 Q. What is that?

13 A. That is -- I think in this stipulation, it's  
14 no more than \$3,000 per home. On average, that is about  
15 \$2,500 that we're finding as we administer the statewide  
16 program.

17 Q. Does that include the cost of the energy  
18 audit?

19 A. Yes.

20 Q. What's the energy audit cost, generally?

21 A. Well, we have -- we have administrative funds  
22 that we provide to these agencies for training and technical  
23 assistance, and they -- their -- their experts are trained in  
24 this, and they're given this national energy audit. So that  
25 would be outside of the 2,500, actually.



1 Q. Okay. So that doesn't come out of the --  
2 A. Yes, that's correct.  
3 Q. -- 2,500. That's what I was looking for. All  
4 right. So then you get into the -- the payment. Is that  
5 done as a reimbursement to someone? They go ahead and make  
6 the improvements, when does the check get written? After  
7 the -- after the improvements are done, does it happen ahead  
8 of time, how does that work?  
9 A. With the federal dollars that we distribute,  
10 that is done ahead of time.  
11 Q. And it's written to who?  
12 A. The action agency.  
13 Q. Okay. And who do they write the check to? Do  
14 they buy all these things, do they do the contracting, who  
15 does all that?  
16 A. As I understand it, they -- the action agency  
17 may have its own employees who actually do the installation,  
18 or they may contract with folks to actually go and do the  
19 heating system upgrades, or insulation measures, or whatever.  
20 Q. Okay. So they write the check to whoever did  
21 the work?  
22 A. Yes, yes.  
23 Q. All right. And it's the same concept that you  
24 have in regard to this -- this money that's being put in for  
25 this purpose?

1           A.       Yes, that's my understanding. Laclede would  
2 pay the action agencies directly up front, and they would  
3 administer, then.

4           Q.       Is there some sort of a payment to the  
5 community action agencies out of this money for  
6 administration, or is that a different part of this?

7           A.       I believe there is a provision in  
8 Attachment 5.

9                    COMMISSIONER GAW:  If someone else knows who  
10 wants to answer that.

11                   MR. ZUCKER:  Yeah, the answer is that  
12 administrative costs are reimbursed up to \$300 per household.

13 BY COMMISSIONER GAW:

14           Q.       Okay.  All right.  And then is there any way  
15 that this -- how do you -- who identifies the houses that  
16 might be potential candidates for this?  Does somebody bring  
17 them into the community action agency, or how does that work?

18           A.       I think in this case, we usually have more  
19 applicants on a waiting lists than we have funds to provide  
20 the services for.  And I think in this stipulation, there's a  
21 provision for Laclede to confidentially identify to the  
22 action agencies the highest users of energy, and they would  
23 be targeted first.

24           Q.       Who is -- when you're dealing with -- with  
25 whom the contact is made with, who makes the contact with the

1 -- the person that would receive these services?

2           A.       I believe the initial contact would be made by  
3 the community action agency.

4           Q.       Okay. Now, how do you deal with the  
5 situations when you're -- when the person who is -- is  
6 getting the service from Laclede is a renter? What happens  
7 in that dynamic?

8           A.       We would -- just one extra step, I believe.  
9 The landlord would have to sign an agreement with the  
10 community action agency that they agree to allow these  
11 installations to be made in their facility.

12          Q.       What's the track history on that, does anybody  
13 know, with this program, when you have a landlord situation?

14                   MR. PENDERGAST: I don't have that information  
15 at my fingertips, Commissioner Gaw.

16                   COMMISSIONER GAW: That's been a concern  
17 that's been expressed in other venues, and I just wondered if  
18 you-all had any specific information.

19                   MR. PENDERGAST: One thing I will note is that  
20 one of the programs that is new is the Landlord or Rental  
21 Property Owner Efficiency Program, where we are taking our  
22 energy-wise program, that basically provides favorable  
23 financing for high efficiency appliances, and making that  
24 available to lower income rental owners to address this very  
25 kind of situation, so I think there's a recognition that that

1 has been kind of a concern. And I think it was the Staff,  
2 maybe, that came up with that particular proposal in  
3 conjunction with a broader one that DNR had as well. And I  
4 think Public Counsel may have had a role play in it, too, but  
5 anyway, it's being addressed as one of the programs that's  
6 under the energy efficiency programs.

7 COMMISSIONER GAW: Anybody else want to add to  
8 that?

9 MR. MEYER: Commissioner, I believe Greg Meyer  
10 from Staff may be able to add to that.

11 (THE WITNESS WAS SWORN.)

12 JUDGE DIPPELL: And if you could give your  
13 name and your position with the Commission.

14 MR. MEYER: It's Greg Meyer, I'm a Regular  
15 Auditor V with the auditing department.

16 QUESTIONS BY COMMISSIONER GAW:

17 Q. What do you know about this, Mr. Meyer?

18 A. Mr. Jackson, out of Kansas City, had a similar  
19 problem with a community action agency out of Kansas City,  
20 Missouri, and experienced similar problems with the renters  
21 -- or the landlords that had renters that had had  
22 weatherization done. And they developed an agreement, or  
23 contract, where the -- the landlord would come in and sign an  
24 agreement that as a result of the weatherization, that the  
25 renters would not see an increase in their rent for a

1 specified period of time so that the weatherization would be  
2 provided, still, by the community action agency, but the  
3 renters would be protected from rent increases due to the  
4 efficiencies that were obtained in the dwellings.

5 Q. Okay. And is that part of this proposal?

6 A. I don't know that it's specifically addressed  
7 in this proposal. I know that we've had discussions with  
8 Jackie Hutchison in the St. Louis action agency about in  
9 developing that same type of contract.

10 Q. That's in the city?

11 A. Yes.

12 Q. Have you had the same discussions with the  
13 county community action agency.

14 A. Not to my knowledge, no.

15 Q. Okay. Thank you. I may have other questions  
16 in a minute.

17 COMMISSIONER GAW: So \$2,500 that would go  
18 in -- that could go per home, what does that do for you?  
19 Would that get you a new -- could it get you a new heating  
20 unit, cooling unit, or not? Probably not?

21 MS. WILBERS: I think it could; I'm not sure  
22 about the cost of the units.

23 COMMISSIONER GAW: Okay. How did we get to --  
24 how about that, Ms. Meisenheimer?

25 MS. MEISENHEIMER: Yes, it could.

1                   COMMISSIONER GAW: Okay. And is that the  
2 thought? What is this supposedly targeted toward when you're  
3 looking at 2,500? I know it varies from one place to  
4 another, but ...

5                   MS. MEISENHEIMER: Actually, my understanding  
6 is that although there may be a cap on how much can be spent  
7 per household, that on average, it's probably closer to  
8 something like 2,000 or 2,100 that actually gets spent. And  
9 my understanding, based on discussions with DNR, is that  
10 there are all sorts of measures that may be taken within a  
11 household, that it's unique to the specific structure in  
12 terms of what it needs, in terms of higher efficiency,  
13 furnace, water heater, and things like insulation. So there  
14 are -- it's -- the measures would be unique to the situation.  
15 QUESTIONS TO MS. WILBERS FROM COMMISSIONER GAW:

16                 Q.       Okay. What else is there in this proposal in  
17 regard to DNR?

18                 A.       There is \$150,000 that has been targeted for  
19 residential heating, high efficiency gas furnaces and boilers  
20 or energy star -- energy star rated or highly efficient gas  
21 furnaces and boilers, so there's \$150,000 targeted for that.  
22 Another \$100,000 is targeted for commercial customers for  
23 high efficiency natural gas equipment, and Mr. Pendergast  
24 mentioned \$50,000 that has been targeted for rental property.

25                 Q.       Okay. Now, have you -- what, of those

1 programs, are new to DNR? Not to Laclede, but to DNR?

2 A. We have worked with AmerenUE on administering  
3 similar residential and commercial high efficiency natural  
4 gas rebate programs, so we have -- we have some experience in  
5 that area. And we -- we hope to take some of the -- the  
6 structure from that program, and some of the lessons learned  
7 there and apply them here to this program. There is a  
8 collaborative group of interested parties that will determine  
9 program design.

10 Q. Will that get reported back to the Commission?

11 A. The program design?

12 Q. Yeah, the collaborative group's work.

13 A. Typically, what has happened is the Company  
14 will file a tariff for the program before it's administered.

15 Q. Okay.

16 A. And if -- I believe there's a provision in  
17 here that if the parties can't come to an agreement, they  
18 would come back to the Commission, I believe it's in  
19 February.

20 Q. Okay. So is DNR satisfied, then? I know  
21 you're satisfied with the stip. Are you happy with these  
22 provisions or satisfied? If I were characterizing it, is  
23 this thrilling to you or are you just, well, you can live  
24 with it and you think it's good to have it in the stip? Use  
25 your own words.

1           A.       Okay. I think it's a very important part of  
2 the stipulation. Of course, additional funding for the  
3 efficiency programs would have greater impact, and I think  
4 provide greater benefits to customers and help them manage  
5 their utility bills, but we are satisfied with this  
6 stipulation.

7                   COMMISSIONER GAW: Anybody else on this group  
8 of issues?

9                   MS. MEISENHEIMER: I would just point out that  
10 DNR got everything that they asked for in this stipulation.

11                  COMMISSIONER GAW: This is all they asked for?

12                  MS. MEISENHEIMER: They got everything that  
13 they asked for.

14                  COMMISSIONER GAW: You mean they could have  
15 asked for more?

16                  MS. MEISENHEIMER: I don't know that they  
17 would have gotten more had they asked for more. You asked a  
18 question about whether anything of this was new.

19                  COMMISSIONER GAW: Yes.

20                  MS. MEISENHEIMER: The one part that I'm  
21 familiar with that I think may be new had to do with a  
22 recommendation to create some supplemental money to help  
23 secure energy-wise dollars to help pay for improvements, and  
24 the Company can probably explain better than I can what the  
25 energy-wise program does.



1                   COMMISSIONER GAW: Do you want to do that,  
2 Mr. Pendergast?

3                   MR. PENDERGAST: Yeah, that's the one I was  
4 referring to earlier where we do have an existing program  
5 where we already offer loans to folks to allow them to put in  
6 high efficiency, not only gas equipment, but in connection  
7 with electric equipment too, if it's all done at the same  
8 time. And what the stipulation does is try and expand the  
9 availability of that program to lower income rental units, so  
10 that they can take advantage of that and --

11                  COMMISSIONER GAW: How does that work with the  
12 lower income group?

13                  MR. PENDERGAST: Well, it's targeted towards  
14 residential. Obviously it's targeted towards owners with, I  
15 think, eight units or less.

16                  COMMISSIONER GAW: Okay.

17                  MR. PENDERGAST: And we're not trying to go  
18 after the big complexes, but I think that one of the things  
19 that Jackie Hutchison has mentioned in the past is you have a  
20 lot of situations where somebody has maybe a four-plex or  
21 they have a duplex. They live downstairs, they have somebody  
22 that lives upstairs. They would like to be able to go ahead  
23 and install some energy efficient equipment, but, you know,  
24 the economics are sometimes hard to -- to overcome. This  
25 program would help them to go ahead and do that, and

1 hopefully not only improve the unit they may be living in,  
2 but also improve the other units they own and that people are  
3 living in in terms of energy consumption.

4 COMMISSIONER GAW: In this case, if it's a --  
5 if it's the landlord situation, who's liable on the loan?  
6 How does that work?

7 MR. PENDERGAST: My supposition is that the  
8 landlord is going to be liable on the loan, not the tenant.

9 COMMISSIONER GAW: Uh-huh. And do they -- do  
10 they -- do they procure the contractor to do the  
11 improvements, or is that done by someone else?

12 MR. PENDERGAST: My understanding is we have a  
13 list of contractors. We have contractors that are available.

14 COMMISSIONER GAW: Right.

15 MR. PENDERGAST: And so I think there's a  
16 selection to go ahead and choose from. I'm not sure that we  
17 try and dictate that.

18 COMMISSIONER GAW: Okay. But they would come  
19 in and do the -- do the work, and then does Laclede, then,  
20 through this program, pay for that work, and then is there  
21 a -- some sort of note or something executed?

22 MR. PENDERGAST: We would provide financing,  
23 yes, and there would be a lien associated with it.

24 COMMISSIONER GAW: Is it on the real estate?

25 MR. PENDERGAST: Yeah, it should be on the

1 real estate, yeah.

2 COMMISSIONER GAW: All right. It's something  
3 that's recorded?

4 MR. PENDERGAST: It's on the furnace, my  
5 understanding is.

6 COMMISSIONER GAW: The lien is on the furnace,  
7 not the real estate?

8 MR. PENDERGAST: Yes, I think that's right.

9 MS. MEISENHEIMER: That supplemental money  
10 was, I think, originated the idea was -- originally Staff's  
11 idea, and so they may have comments on it.

12 COMMISSIONER GAW: Are they there?

13 MR. MEYER: Mr. Pendergast was fine, we don't  
14 have anything to add to that.

15 COMMISSIONER GAW: Okay. How long has this  
16 program been out there? I know you put the landlord piece on  
17 it, but how long has it been out there? Do you know?

18 MR. PENDERGAST: At least -- at least since  
19 '97, and perhaps before that.

20 COMMISSIONER GAW: Do you know how much has  
21 been utilized?

22 MR. PENDERGAST: It's been utilized more in  
23 the past than it has recently, and I think one of the reasons  
24 for that is that with where mortgage interest rates have  
25 been, and the availability of home equity loans are pretty

1 favorable conditions, it's been a little hard to offer  
2 something that's even more favorable than that.

3                   Of course, this part of the program is  
4 designed to shave off those interest charges and shave off  
5 the up-front expenditure that somebody normally has to make  
6 under the program to participate, so that we will hopefully  
7 encourage more people to become users of the particular  
8 service.

9                   COMMISSIONER GAW: Right. Is there -- is  
10 there some sort of an interest rate break in the program?

11                   MR. PENDERGAST: Seven and a half percent, and  
12 I think it's payable over five years.

13                   COMMISSIONER GAW: Okay. I don't know what  
14 it's running at, to get interest on a new furnace, so I don't  
15 know how that compares one way or the other.

16                   MR. PENDERGAST: Yeah, I mean, a home equity  
17 loan, folks can have that at five and a half percent.

18                   COMMISSIONER GAW: Yeah, if you go out and use  
19 the real estate itself?

20                   MR. PENDERGAST: Right.

21                   COMMISSIONER GAW: Yeah. Okay. I think  
22 that's all I have about this line.

23                   JUDGE DIPPELL: Okay. Commissioner Appling,  
24 did you have any questions?

25                   COMMISSINER APPLING: No.

1 JUDGE DIPPELL: All right. I'm not sure that  
2 there are any other Commission questions, so I'll just tell  
3 you that you are free to go and I'll risk there being other  
4 Commission questions.

5 MR. SCHAEFER: Thank you. And if anything  
6 does come up, we'd be more than happy to respond.

7 COMMISSIONER GAW: Thank you-all for coming  
8 over.

9 JUDGE DIPPELL: Commissioner Gaw, did you have  
10 questions on other topics?

11 COMMISSIONER GAW: Yes.

12 JUDGE DIPPELL: Okay.

13 QUESTIONS OF BARB MEISENHEIMER FROM COMMISSIONER GAW:

14 Q. The -- the change on disconnection to -- from  
15 8:00-4:00 to 7:00-7:00, I believe, Public Counsel, what's  
16 your position on that, in general?

17 A. It was not our favorite provision of the  
18 settlement, but it is a part of the total settlement.

19 Q. I understand. I'm talking about just in  
20 principle, what's your position on it, outside the scope of  
21 the settlement?

22 A. I believe that there are other utilities in  
23 the state that have something different than, like, an  
24 8:00-4:00. And so this may not match up exactly in terms of  
25 the hours, but it was something that -- that we felt like

1 existed, and therefore we can live with it.

2 Q. Is there a rule on this?

3 A. There -- I think there's a -- is it dawn to  
4 dusk?

5 COMMISSIONER GAW: Staff?

6 MR. MEYER: I'm told there is a rule, I'm not  
7 exactly sure which.

8 COMMISSIONER GAW The stipulated -- the  
9 stipulated thing is contrary to the rule, isn't it?

10 MS. MEISENHEIMER: Gay Fred could probably  
11 answer the questions that you have.

12 QUESTIONS OF MS. GAY FRED BY COMMISSIONER GAW:

13 Q. Would you like that one, Ms. Fred?

14 A. In Chapter 13, there is provisions for the  
15 time of day for disconnection currently. There are utilities  
16 who have received waivers from those who are currently  
17 utilizing other times to do the same type of work.

18 Q. Okay. Are those waivers, are they 7:00-7:00  
19 now?

20 A. They're dusk to dawn now.

21 Q. Dusk to dawn?

22 A. Right, or 7:00-7:00. I think it's provision  
23 either way.

24 Q. Okay.

25 A. It's either/or. So this is nothing that would

1 not be consistent with other utilities --

2 Q. Okay.

3 A. -- this proposal.

4 Q. But it is inconsistent with our current rule?

5 A. It is inconsistent, correct.

6 COMMISSIONER GAW: Okay. Someone explain to  
7 me the difference in the change in regard to notice to  
8 disconnect. Public Counsel, is this another one of your  
9 favorite provisions? You're going from 11 business days that  
10 notice is good for, to 30 calendar days, if I understand it  
11 correctly. If I'm wrong, don't hesitate to correct me.

12 MR. PENDERGAST: That's correct.

13 COMMISSIONER GAW: Help me understand that,  
14 Public Counsel --

15 MS. MEISENHEIMER: Again --

16 COMMISSIONER GAW: -- the rationale for it.

17 MS. MEISENHEIMER: -- that was not something  
18 that our office proposed.

19 COMMISSIONER GAW: You all didn't fight for  
20 that one, did you? Kidding. What -- translate 20 business  
21 days into calendar days for me, first. What's that?

22 MS. MEISENHEIMER: Eleven business days.

23 COMMISSIONER GAW: Is it 15 days, basically?  
24 So it's doubled, in essence? We've doubled the amount of  
25 time that a notice of disconnect is good for? Does that

1 sound right?

2 MR. PENDERGAST: That's about right, I think.

3 COMMISSIONER GAW: And is this something  
4 that's contained in our rules currently? Ms. Fred, who's  
5 nodding her head.

6 MS. FRED: Yeah, it is in our current rule.

7 COMMISSIONER GAW: You need to probably come  
8 up close for the court reporter.

9 COURT REPORTER: I got it.

10 COMMISSIONER GAW: You did?

11 COURT REPORTER: Uh-huh.

12 COMMISSIONER GAW: She said she got that. It  
13 is in our current rules, and what do our current rules say?

14 MS. FRED: Our current rules say that they  
15 have 15 days or less.

16 COMMISSIONER GAW: Fifteen days or less.

17 Okay. So do any other utilities have notice provisions on  
18 disconnect out there that are good for longer than the rule  
19 currently states?

20 MS. FRED: No.

21 COMMISSIONER GAW: So this would -- this would  
22 be something that would be different?

23 MS. FRED: Yes, and I might mention that this  
24 also has been discussed in the rulemaking proposal for  
25 Chapter 13 provisions, among all parties -- or among all



1 utilities, and this is an issue that we're looking forward to  
2 proposing to the Commission in that rulemaking amendment.

3 COMMISSIONER GAW: Uh-huh. Okay. I hope -- I  
4 hope not everyone is looking forward to it. Then, thank you,  
5 Ms. Fred.

6 MS. FRED: You're welcome.

7 COMMISSIONER GAW: Public Counsel, do you see  
8 any issues with extending the number of days that a notice of  
9 disconnect is good for from your standpoint? And I know you  
10 signed off on the agreement, because you found other things  
11 in there that you like. But from a principle standpoint, do  
12 you have an issue with this, or do you even have a position  
13 today?

14 MS. MEISENHEIMER: It gives them less  
15 certainty in terms of when -- when their service might be  
16 disconnected. On the other hand, I don't know that it would  
17 necessarily create situations where they would get a longer  
18 period of time for their service was created -- or  
19 disconnected. I can't say that. So I don't have a -- at  
20 this time, I don't have a strong position on that.

21 COMMISSIONER GAW: Mr. Pendergast, do you want  
22 to put anything into the --

23 MR. PENDERGAST: Yeah, I guess on the --

24 COMMISSIONER GAW: -- pot?

25 MR. PENDERGAST: -- Both of the issues that we

1 were talking about, taking the 30 days when we're hopeful  
2 that that will provide an opportunity to have to send out  
3 fewer disconnection notices ultimately. And one thing that  
4 may confuse customers, at least some customers already, is  
5 that you're required to send out, you know, kind of a  
6 cascading number of disconnect notices, and sometimes it can  
7 be a little difficult to -- to determine when I should be as  
8 concerned as I ought to be about paying my bills so I don't  
9 get disconnected.

10 I think it will help to maybe cut back a  
11 little bit on that kind of confusion, and you know, there's  
12 always the thought of, you know, how close in time to when  
13 disconnection occurs do I want to go ahead and give notice,  
14 counterbalanced against that I want to give people as much  
15 notice as possible. And there's no, I guess, clear-cut  
16 guideline as to when it's too early and when it's too late,  
17 but we think that -- that having this additional time to have  
18 effective will help rationalize the process a little bit,  
19 hopefully to the benefit of both the customer and the  
20 Company.

21 And on the disconnection and going to  
22 additional time, I think one important consideration on that  
23 is you have a lot of situations where people just aren't home  
24 during the day, during normal business hours, and to the  
25 extent that you can actually have a service person out there

1 that has the opportunity to go ahead and make actual contact  
2 with the customer -- I mean, a lot of times we find that  
3 customers will pay if they have that final human contact  
4 before disconnection arises. And unlike some other  
5 utilities, we're willing to go ahead and accept those  
6 payments at the door.

7 I know some have taken a position that after a  
8 certain period of time, or at all, I will not accept payments  
9 out in the field. We will do that, and I think there's as  
10 much likelihood that this will help void interruptions as it  
11 will go ahead and result in additional service  
12 disconnections.

13 COMMISSIONER GAW: Is there a minimum time  
14 before disconnection can occur? If you say there's a maximum  
15 time, 11 business days, or now, if this agreement is  
16 approved, 30, is there a minimum time?

17 MR. PENDERGAST: Let me have Mr. Zucker answer  
18 that so that you get an accurate answer.

19 MR. ZUCKER: Well, from the time you get your  
20 bill by rule and tariff, you have 21 days to pay it. After  
21 that, if you don't pay it and the bill becomes delinquent, we  
22 send a notice of delinquency.

23 COMMISSIONER GAW: Okay.

24 MR. ZUCKER: The minimum time, by rule, is ten  
25 days. So a customer has at least ten days, then, to pay the

1 bill before they go into the disconnect period.

2 COMMISSIONER GAW: Then is there another  
3 notice sent that says you'll be disconnected if something  
4 doesn't happen?

5 MR. ZUCKER: Right, there is another notice  
6 sent that is intended to arrive -- that is intended to be  
7 delivered to the customer between four and two days before  
8 the -- the disconnection becomes applicable. So they get the  
9 bill, they get the disconnect notice, and then they get the  
10 final notice that tells them that in a few days, that the  
11 disconnection date will have arrived.

12 COMMISSIONER GAW: Is there -- and there is a  
13 minimum time on this notice or not? In other words, it will  
14 not occur before a certain date on the notice?

15 MR. ZUCKER: Well, the first notice that --

16 COMMISSIONER GAW: Just the last notice.

17 MR. ZUCKER: The last notice can be sent,  
18 let's say, four days before that disconnect date, so it  
19 doesn't give extra time on top of the ten days, necessarily.

20 COMMISSIONER GAW: Oh, I see.

21 MR. ZUCKER: Unless we send it later, and then  
22 it gives an extra four days.

23 COMMISSIONER GAW: I see. Is that by policy  
24 or by rule?

25 MR. ZUCKER: There is a rule that requires it.

1                   COMMISSIONER GAW: So it's between -- the way  
2 it currently is, you'd have between four and eleven days when  
3 it could be turned off. Am I following you?

4                   MR. ZUCKER: No, not exactly.

5                   COMMISSIONER GAW: Okay.

6                   MR. ZUCKER: We send the notice of a  
7 disconnection, and that gives at least ten days by rule. We  
8 actually currently give 21 days, but the minimum we could  
9 give is ten, okay? Four days before that ten days ends, we  
10 send another notice saying, you know, it's coming up here  
11 where you could be disconnected.

12                  COMMISSIONER GAW: Right.

13                  MR. ZUCKER: Okay. Now the date of  
14 disconnection occurs.

15                  COMMISSIONER GAW: Okay.

16                  MR. ZUCKER: Once that date occurs, we can do  
17 the disconnection anytime between then and eleven business  
18 days after then.

19                  COMMISSIONER GAW: Okay.

20                  MR. ZUCKER: And then in those -- after those,  
21 let's say, 15 days, if the customer has not paid, we no  
22 longer can disconnect for the next 15 days until the next  
23 month kind of rolls over.

24                  COMMISSIONER GAW: Why is that?

25                  MR. ZUCKER: Because the rule currently cuts

1 off the disconnection period at 11 business days.

2 COMMISSIONER GAW: Yeah, but you can't just  
3 send another disconnect notice -- oh, I see, it's four plus  
4 11.

5 MR. ZUCKER: Right, you have to start --  
6 right, that period ended, and you would have to start over  
7 again.

8 COMMISSIONER GAW: So this extends it to 30  
9 days from 11?

10 MR. ZUCKER: From basically 15.

11 COMMISSIONER GAW: Okay.

12 MR. MEYER: Commissioner, for the record, I  
13 don't think I've heard anybody actually cite the rule that  
14 everybody's been referencing.

15 COMMISSIONER GAW: Yes.

16 MR. MEYER: It's in Chapter 13, it's 4 CSR  
17 240-13.050. The provisions for the hours, the 8:00 to  
18 4:00 p.m., and all that are in subsection three. The  
19 provisions that Mr. Zucker was just discussing with the  
20 notice to customers is subsection five.

21 COMMISSIONER GAW: Okay. Thank you.  
22 Somewhere in here, just a second. Well, I wrote myself a  
23 note about notice of transportation customers, and I'm not  
24 seeing it here.

25 MR. ZUCKER: In the stipulation, you mean?

1 COMMISSIONER GAW: Yes, uh-huh.

2 MR. ZUCKER: In the stipulation, it's on  
3 Page 5 under section 2(g).

4 COMMISSIONER GAW: Okay. Thank you. Okay.  
5 Tell me what that does in tariff, then, just generally.

6 MR. ZUCKER: Okay.

7 COMMISSIONER GAW: What's it require that's  
8 different?

9 MR. ZUCKER: It allows us to give different  
10 types of notification to the transportation customers. We  
11 can call them on the phone or e-mail them or fax them.

12 COMMISSIONER GAW: Okay. What could you do  
13 under the current? How does it change under the stip from  
14 when it's done -- what's done currently?

15 MR. PENDERGAST: Commissioner?

16 COMMISSIONER GAW: Yes.

17 MR. PENDERGAST: Currently, we have to try and  
18 just get a hold of them by phone and just keep on trying  
19 until we do. This allows us to go ahead and use fax and  
20 e-mail in addition to that.

21 COMMISSIONER GAW: So are you to -- are you to  
22 assume, then, under this stip, that if you e-mail, that's  
23 sufficient notice?

24 MR. PENDERGAST: Yes, it would be sufficient.  
25 We will still try and make phone calls, but we'll be able to

1 use that as an alternative, or an additional means of  
2 providing the notice.

3 COMMISSIONER GAW: And what's this notice --  
4 what's the purpose of this notice? What's the context of it?

5 MR. PENDERGAST: Commissioner, it's primarily  
6 when we're in a period of limitation. In other words, there  
7 is a problem with a supplier, or pipeline is saying that  
8 they're putting us in limitation.

9 COMMISSIONER GAW: Okay.

10 MR. PENDERGAST: It's to notify the  
11 transportation customers that take all the gas that you've  
12 nominated and actually delivered to our system, but don't  
13 take more, we're in a period of limitation, and you're not  
14 entitled to purchase gas from us.

15 COMMISSIONER GAW: Okay. And this would have  
16 been -- at least some entities with this interest, would have  
17 been represented by Ms. Vuylsteke?

18 MR. PENDERGAST: Sure, absolutely. Almost all  
19 of her clients are transportation customers.

20 COMMISSIONER GAW: Okay. All right. Let me  
21 go on to the PGA modifications. Who at Staff has that  
22 information?

23 MR. MEYER: Mr. Imhoff.

24 COMMISSIONER GAW: Okay. Is he sworn already?

25 JUDGE DIPPELL: Not yet.



1 (THE WITNESS WAS SWORN.)

2 JUDGE DIPPELL: Thank you. If you could state  
3 your name and spell it for the court reporter.

4 MS. MEISENHEIMER: Okay. My name is Thomas  
5 M. Imhoff, last name is spelled I-M-H-O-F-F, and I work  
6 within the rates and tariffs for the -- for the energy  
7 department.

8 JUDGE DIPPELL: Thank you.

9 QUESTIONS BY COMMISSIONER GAW:

10 Q. Okay. I'm going to ask just a few questions  
11 here about this, Mr. Imhoff, and what -- one of the things I  
12 want to know, as we go through these provisions, is whether  
13 or not this is something that -- this provision is something  
14 that was changed as a result of the negotiation, principally  
15 because of the settlement here, or if it was done because  
16 this is sort of the new -- newer policy that the Commission  
17 has in regard to that factor.

18 A. Okay.

19 Q. The first thing that I have down here is the  
20 limitation of the refund factor, and I want you to tell me  
21 first what that is. What that means?

22 A. Okay. Basically, what that would be is  
23 whenever there would be a refund that would come in, they  
24 would -- you would have to wait until there -- there would be  
25 an actual PGA filing before the customers could actually get

1 credit for that refund. Now, under the -- under the current  
2 proposal, they would -- that would be incorporated into the  
3 calculation of the current gas cost immediately starting out  
4 when the -- when they would get the refund. So it will be  
5 calculated to lower the gas cost whenever you are calculating  
6 out the interest portion, whether it would be an over or an  
7 undercollection of gas costs.

8 COMMISSIONER GAW: Mr. Pendergast, you, or  
9 whoever, quick version of it.

10 MR. PENDERGAST: Yeah, I think that's  
11 basically -- the only thing we would add is it just makes it  
12 part of -- the ACA moves it in so it gets counted like  
13 everything else, as opposed to having it be a separate  
14 factor. And it's just one of those measures that's -- we've  
15 taken to go ahead and try and simplify the accounting for  
16 this and make it a little more consistent, too, with how  
17 other utilities do it now.

18 BY COMMISSIONER GAW:

19 Q. Is this, as a result of the -- of the changes,  
20 the recommendations for changes that were made by Staff in a  
21 more generic study?

22 A. Yes, it is.

23 Q. All right. All right. Then let me go on,  
24 then, to the sharing costs, including hedging costs. Tell me  
25 what that means from how it's currently being done, first of

1 all.

2           A.       Basically what that does is you can -- they  
3 can incorporate all costs that would help lower the PGA  
4 rather than taking what the Nimex strip itself would be.  
5 Under the old PGA tariffs, they could just take the Nimex  
6 strip and use that as a basis for the cost. Here, whenever  
7 you -- you can incorporate the hedging fixed price contracts,  
8 storage costs, everything to help lower the actual PGA rate  
9 itself.

10           Q.       Well, first of all, I'm assuming when you say  
11 all costs, you mean all prudent costs -- prudently incurred  
12 costs?

13           A.       All -- all -- there's a -- all costs that --  
14 that we have the time to actually review. In the context of  
15 an actual PGA filing, we only have ten business days, so we  
16 don't really have the ability to do a very detailed  
17 assessment as to the prudence.

18           Q.       Do you do it at the ACA?

19           A.       Yes, we do.

20           Q.       So you would eventually get around to looking  
21 at the prudence of the cost?

22           A.       Yes.

23           Q.       All right. Now, in regard to the -- what  
24 occurs with those costs now, before this agreement is done?  
25 Where are those costs showing up? Are they in base rates or

1 what's going on with those costs?

2 A. They would be -- they would be calculated  
3 within the PGA.

4 Q. Okay. Okay. I guess what I'm look for is,  
5 what's changing here. I'm not sure I'm following you. It's  
6 probably me, so ...

7 MR. PENDERGAST: If I could, I think one of  
8 the major changes is, we are, once again, kind of conforming  
9 how we do things, both accounting-wise and PGA-wise, with how  
10 other utilities have been doing them for some time now, as a  
11 result of that general process the Commission had on the PGA  
12 several years ago.

13 And I think in addition to what Tom had to  
14 say, the major change is that we are now measuring and  
15 tracking over- and under-recoveries from dollar one.  
16 Laclede, up to this point, had something called a DCCV, which  
17 I'm sure nobody wants me to go ahead and get into.

18 COMMISSIONER GAW: That's okay.

19 MR. PENDERGAST: It was an accounting  
20 mechanism, and there were various levels over which you did  
21 recognize carrying costs, either up or down, in the  
22 customers' favor or the Company's favor. And what this does  
23 is say we're going to start measuring those from the word go,  
24 like we do with other utilities. And whatever they are,  
25 you're positive or negative. The prime line is two carrying

1 costs will be applied to it. So it's really a simplification  
2 process and making sure that everything stays even, either up  
3 or down, from the very beginning.

4 COMMISSIONER GAW: Public Counsel have any  
5 feedback on this that's helpful to me?

6 MS. MEISENHEIMER: It was not our issue, and  
7 we relied on the Staff.

8 BY COMMISSIONER GAW:

9 Q. Okay. I got it. Staff, anything else?

10 A. I might add that all other changes pertaining  
11 to the PGA were tied back to the generic docket that we'd  
12 worked on a couple years ago.

13 Q. Okay.

14 A. These were just some of the changes that --  
15 that needed to be made to bring Laclede in compliance with  
16 it -- or to where they would be equal with all the other LDCs  
17 who have conformed to those changes.

18 Q. Okay. That would be true of, then, the three  
19 discretionary, one mandatory filing?

20 A. Yes.

21 Q. What about reflecting increases and decreases  
22 in financing costs for hedging? Is that the same thing?

23 A. Let me see here.

24 JUDGE DIPPELL: This is a good time for me to  
25 remind everyone to turn off your cell phones and blackberry

1 devices, because they tend to interfere with our Internet  
2 broadcast.

3 MR. PENDERGAST: My apologies.

4 MR. IMHOFF: Okay. That last change was to  
5 incorporate the gas inventory costs that were not subject to  
6 the generic docket.

7 BY COMMISSIONER GAW:

8 Q. I'm not sure I followed you on that,  
9 Mr. Imhoff. That's something that was not in the last -- in  
10 that generic docket?

11 A. That is correct.

12 Q. So there is something in here that does not  
13 pertain to that?

14 A. One thing, yes. I apologize.

15 Q. Now explain that one to me. What are you  
16 doing here in subsection C?

17 A. Okay. That -- that was part of that \$4.1  
18 million shift from base rates over to the PGA, so -- so --  
19 and which is what we-all had agreed to, pursuant to the stip,  
20 but it was not in the generic docket.

21 Q. Okay. Okay. So that's part of the \$4.1  
22 million issue?

23 A. Yes.

24 Q. Okay.

25 A. Oh, if you would -- the PGA generic docket

1 number was GO-2002-452, as a reference.

2 Q. Okay. Thank you.

3 COMMISSIONER GAW: Refresh my memory on -- on  
4 179 in regard to this phrase "customer usage levels". Is  
5 that the phrase that's used in that legislation, "customer  
6 usage levels"? I'm not sure. I'm trying to recall.

7 MR. PENDERGAST: I don't have the statute in  
8 front of me right now, Commissioner, but I believe it talks  
9 about changes in non-gas revenues associated with increases  
10 or decreases in customer usage due to weather and  
11 conservation. Something along those lines.

12 COMMISSIONER GAW: Okay. So there's more to  
13 it than -- in the statute, than just the phrase "customer  
14 usage levels"?

15 MR. PENDERGAST: Yes.

16 COMMISSIONER GAW: There's some modifications,  
17 or at least there are more words there. I'm trying not to be  
18 judgmental.

19 MR. PENDERGAST: There are more words, and it  
20 does reference weather and conservation in particular.

21 COMMISSIONER GAW: Okay. Okay. So there's  
22 not any intent here to try to say something that -- that is  
23 anything other than whatever the statute says, and at some  
24 point in time interpreted to say you're not waiving your  
25 rights to those things. That's the only thing we're saying

1 in this?

2 MR. PENDERGAST: That's correct.

3 COMMISSIONER GAW: Okay. And I would correct  
4 that if I said we -- I mean, you.

5 MR. PENDERGAST: That would be correct also,  
6 Commissioner.

7 COMMISSIONER GAW: Let's see. Okay. In  
8 regard to subparagraph ten, then. Maybe it's not in ten.  
9 The provision that has to do with gas safety. Is that in ten  
10 or something else? I see the cold weather rule provisions  
11 there. Yes, gas safety as well.

12 In that -- in that regard, help me understand  
13 the -- the accounting there. Is that something that's  
14 just -- is a normal way of handling those expenditures, or is  
15 this something that's being handled in some different way  
16 than normal?

17 MR. MEYER: I think with respect to Commission  
18 precedent and policy, I think Mr. Rackers would like to  
19 respond.

20 QUESTIONS BY COMMISSINER GAW:

21 Q. Mr. Rackers, go ahead?

22 A. These are costs, which through an accounting  
23 authority order authorization, similar to the way it's been  
24 handled in a number of previous, not only Laclede cases, but  
25 other gas company rate cases. They're allowed to accumulate



1 the costs in between rate cases associated with depreciation,  
2 rate of return, property taxes, all these safety additions.

3 Q. Okay.

4 A. This -- this will be replaced by the ISRS.  
5 We'll no longer have to have an accounting authority order  
6 for these type of additions. They'll be covered within an  
7 ISRS.

8 Q. All right. So on the gas safety expenditures,  
9 what time frames are we referring to there that will be  
10 amortized going forward? What time frames are the actual  
11 expenditures occurring in that are being referred to?

12 A. They were -- these were costs that were  
13 incurred since the last rate case.

14 Q. Okay.

15 A. The AAO was authorized in the last rate case,  
16 so since the last case, through I think it's -- I think it's  
17 June or July of 2004.

18 Q. That's when there was an ISRS filing or an  
19 ISRS award or something?

20 A. Right, that's when the first ISRS was approved  
21 for Laclede.

22 Q. Okay. So that's what we're talking about in  
23 regard to gas safety, is that window of time?

24 A. Correct.

25 Q. Okay. And that's being amortized out

1 according to the stip until when?

2 A. For ten years.

3 Q. Okay. All right. And was there a review done  
4 on the expenses associated with the emergency cold weather  
5 rule?

6 A. Yes, there were. And through -- through  
7 July 31st, there was an over-collection of costs that were  
8 put into rates. I'm sorry. Dollars that were put into rates  
9 to cover those costs.

10 Q. Okay.

11 A. So that \$27,801 that's shown there was offset  
12 against the \$859,000 of safety expenditures. And then until  
13 these -- they'll continue to -- for lack of a better term --  
14 over-collect, until the new rates are approved in this case.

15 Q. Okay.

16 A. So any of those over-collected dollars will be  
17 offset against these safety expenditures.

18 Q. Okay. So you'll pick those up in the -- the  
19 \$859,000? That's stationery, isn't it?

20 A. Yes.

21 Q. The \$27,801 will change until the entry of the  
22 order in this case, assuming the entry approves the stip?

23 A. Well, the \$27,801 is pretty much stationery  
24 too, but there will be additional dollars -- additional  
25 amounts of offset.

1 Q. Oh, I see.

2 A. That's two thousand --

3 Q. For the two thousand --

4 A. Correct.

5 Q. Thank you for that clarification. That's why

6 I have difficulty discussing these things with accountants.

7 Anyway, it's okay. I'm -- it's a joke. Off-system sales, I

8 may have a few questions on that. Who has that again?

9 A. Me.

10 Q. Okay. That's what I thought. Okay. Explain

11 to me what are considered sales -- off-system sales. What

12 falls into that category?

13 A. I'm afraid I'm going to have to defer that to

14 Dave Sommerer. I'm just interested in, you know, the

15 accounting aspect of it.

16 Q. I understand. I understand. Is he back

17 there?

18 A. He's here.

19 Q. He was hiding behind the pole.

20 MR. SOMMERER: Yes, I was.

21 JUDGE DIPPELL: Mr. Sommerer, I'll need you to

22 come up so we can hear your response, and I don't believe

23 you've been sworn yet.

24 COMMISSIONER GAW: How did he avoid that?

25 JUDGE DIPPELL: He was out of the room.

1 (THE WITNESS WAS SWORN.)

2 JUDGE DIPPELL: If you could state and spell  
3 your name for the court reporter, and give your position at  
4 the Commission.

5 MR. SOMMERER: My name is David Sommerer,  
6 S-O-M-M-E-R-E-R, and I'm the manager of the procurement  
7 analysis department -- procurement analysis department,  
8 sorry.

9 QUESTIONS BY COMMISSIONER GAW:

10 Q. Okay. What are considered off-system sales,  
11 Mr. Sommerer?

12 A. Those are sales that the Company makes outside  
13 their traditional service area. They are not subject to the  
14 purchase gas adjustment clause as native load would be. So,  
15 for example, if Laclede saw an opportunity in Chicago to sell  
16 gas that they had available that wasn't going into St. Louis,  
17 necessarily --

18 Q. Right.

19 A. -- they could make that sale at a profit and  
20 that would create off-system sales revenue.

21 Q. Okay. Now, is this -- is this just the sale  
22 of gas they physically own, or can it be the sale of some  
23 sort of financial instruments that they might have that could  
24 be utilized to -- to actually get them gas?

25 A. This would be the sale of gas -- physical gas

1 that they actually own.

2 Q. Okay. So -- and where is it that that's  
3 stated, and what do you rely on when that question is  
4 answered?

5 A. Laclede has an off-system sales tariff that  
6 governs the accounting and that gives you a definition of  
7 off-system sales.

8 Q. Okay.

9 A. And it lets you know how the accounting should  
10 work.

11 Q. Okay. Is that a long definition?

12 A. It's probably about a sentence.

13 Q. Do you know what it -- does somebody have  
14 that? Mr. Pendergast? Thank you. Go ahead, Mr. Sommerer.

15 A. This is on, tariff sheet --

16 Q. Ready.

17 A. -- R-42: Off-system marketing sales  
18 (OS-sales) are herein defined as any company's sale of gas,  
19 or gas bundled with pipeline transportation, made to parties  
20 at locations off the Company's distribution system.

21 Q. Okay. So it's on -- it's something that's off  
22 their system, which means what to you?

23 A. Outside of their service territory.

24 Q. Okay. Where could the gas come from?

25 A. The gas could be located or sourced from any

1 Laclede natural gas supply contract. Laclede has supply  
2 contracts that have access to various production zones,  
3 mainly in Louisiana, and Texas, Oklahoma.

4 Q. Okay. All right. And so the idea here is  
5 that there's -- there's going to be an assumption made of  
6 some sort, which I heard earlier, there isn't anyone that  
7 really has a read on what that amount is, but somebody is  
8 assuming some amount of off-system sales. All the parties  
9 here must be doing that, are going to be made going forward,  
10 some amount.

11 A. That's correct.

12 Q. Okay. So -- and then -- and then there's this  
13 agreement about up to \$12 million in off-system sales, the  
14 Company that -- up to that \$12 million, correct? Am I  
15 following this so far?

16 A. That's right.

17 Q. And then over the 12 million, then it's --  
18 half of it goes to the Company, and half of it goes to the  
19 customers?

20 A. That's correct.

21 Q. And how does it flow back to the customers?

22 A. The way the provision works is it's held in an  
23 account, and to the extent that there's a greater level of  
24 profit that exceeds \$12 million, it's to be considered in the  
25 next rate case, that is to be returned to customers as part

1 of rates in the next rate case.

2 Q. Okay. Now, the gas that's being sold, does  
3 that show up when it's purchased in the PGA?

4 A. If Laclede were to make an off-system sale, is  
5 that where you're going?

6 Q. I may be going there, but I'm just trying to  
7 get first things first here. I'm just trying to understand  
8 when it's purchased --

9 A. Yes.

10 Q. -- does that gas show up in the PGA?

11 A. Indirectly.

12 Q. Okay.

13 A. Laclede will estimate -- Laclede's PGA rate is  
14 no more --

15 Q. It's an estimate?

16 A. No more than an estimate.

17 Q. Okay.

18 A. It's its best guess on what its actual cost  
19 will be.

20 Q. Okay.

21 A. As customers use natural gas, they pay a PGA  
22 rate.

23 Q. Okay.

24 A. And that may or may not be representative of  
25 what Laclede is actually paying. That's trued up in the

1 actual cost adjustment process.

2 Q. All right. And in the actual cost adjustment  
3 process, the ACA, then if that gas is purchased but not used,  
4 some of it is purchased but not used, what -- what -- how  
5 does that show up in the ACA?

6 A. We would ask for information related to  
7 off-system sales and ACA typically just to make sure the  
8 costs are properly accounted for. So you may have an invoice  
9 from a producer, and the invoice might be 90 percent directed  
10 towards an on-system sale and ten percent directed towards an  
11 off-system sale.

12 Q. Okay. And then what happens? What do you do  
13 with that?

14 A. Okay. On-system sales are allocated to actual  
15 gas costs, and they're trued up as part of that ACA process.  
16 Off-system sales would be separate from that. It would be a  
17 separate account, and at the time of a rate case, you would  
18 analyze the level of off-system sales to try and determine a  
19 reasonable number, but off-system sales cost will not effect  
20 the cost of customers in the PGA.

21 Q. Okay. So if the -- if the PGA estimate had  
22 indicated that there would be more gas used than what was  
23 actually used and the money expended -- let me start all  
24 over.

25 I'm trying to understand the -- how the



1 interplay of this portion of off-system sales as it's  
2 reflected in the base rates interlocks with what's going on  
3 with the PGA/ACA process. And what -- and whether or not  
4 this is the best way to handle off-system sales.

5           So first of all, is this Staff's position on  
6 how you should handle off-system sales? Not in regard to the  
7 stip, but is it normally Staff's position that this is how to  
8 handle off system sales?

9           A.     Yes, it's consistent with Staff's position  
10 which is an imputation of a certain level, an ongoing level  
11 to be credited in the rate case or to be handled or  
12 normalized in the rate case.

13          Q.     Okay. And is that consistent with Staff's  
14 position in regard to how off-system sales should be handled  
15 in regard to off-system sales of electricity and electric  
16 cases if there is -- if we are going to some sort of a -- a  
17 flow through like that's contemplated by 179 on electricity?  
18 Is this consistent?

19          A.     When you're talking about electricity, it's a  
20 little bit beyond my usual area. I know the traditionally in  
21 electric cases, purchase power interchange sales have been  
22 normalized and treated very similarly to the way that  
23 off-system sales is handled. And that's the genesis really  
24 of Staff's wanting to treat off-system sales in a consistent  
25 manner with the way it's handled on the electric side.

1           Q.       I'm trying to -- I understand that -- that  
2 there -- that if we're not dealing with -- with fuel  
3 adjustment clauses, that the desires to put it in -- in  
4 the -- in the rates and base -- base rates, but I -- but  
5 what's not clear to me yet is whether or not Staff takes the  
6 same position in regard to electricity when you get to some  
7 sort of a fuel adjustment clause mechanism.

8                   And it's relevant to me here because I'm  
9 trying to understand, policy-wise, whether there's a  
10 consistency in the treatment of this -- of these off-system  
11 sales on gas and what the Staff's position will be in regard  
12 to electricity in off-system sales there.

13           A.       And they're probably is a better witness who  
14 is more in tune with the round table process to answer your  
15 question there.

16           Q.       Okay. All right. So if there are off-system  
17 sales made, the concept here is that up to \$12 million will  
18 be kept by the Company. Does that insinuate that Staff  
19 believes that there are \$12 million in sales that are built  
20 in to its assumptions and deriving what the base rates are?

21           A.       No.

22           Q.       Does Staff believe there is more than that or  
23 less than that?

24           A.       Staff believes there is less than that.

25           Q.       Okay. So Staff's position here is

1 contemplating that Laclede is -- is collecting some  
2 percentage of profit, if its assumptions on off-system sales  
3 are correct, in that first \$12 million?

4 A. To the extent that Laclede is able to achieve  
5 the \$12 million, there would certainly be some profit for  
6 Laclede, yes.

7 Q. Okay. I don't know if you can tell me this  
8 without it being an HC, so you just -- somebody speak up. So  
9 does -- what was Staff's assumption in regard to off-system  
10 sales?

11 A. As Mr. Rackers indicated, there wasn't a  
12 specific number that was ever agreed to between the parties.

13 Q. Oh, I understand that. I'm just asking what  
14 Staff's position was.

15 A. Staff's position?

16 Q. And if you can say that. Okay. No one's  
17 saying no. Go ahead.

18 A. Staff's position in creating the original  
19 Staff revenue requirement was \$7.2 million. That included  
20 both off-system sales and capacity release.

21 Q. Okay. And does the Company want to say what  
22 its position was?

23 MR. PENDERGAST: Our testimony, I believe,  
24 recommended an imputed level of I think 3.8 or 3.9 million.

25 COMMISSIONER GAW: Okay.

1                   MR. PENDERGAST: Of both off-system sales and  
2 capacity release.

3 BY COMMISSIONER GAW:

4                   Q.     Okay. Okay. And then Mr. Sommerer, why is it  
5 that -- that we should see this \$12 million as being  
6 appropriate for Laclede to -- to keep if Staff's position was  
7 the most that they sold off-system was 7.2 million?

8                   A.     The way that the Staff developed the 7.2  
9 million was looking over about five to seven years worth of  
10 experience. It was a number that was highly volatile and  
11 varied between, let's say, \$3 million and \$11 million. So  
12 the Staff took an average. That average sometimes was  
13 achieved by Laclede, sometimes they made less than that,  
14 sometimes they beat that average considerably. So it was a  
15 difficult number to settle.

16                   It was a difficult number to derive not  
17 mathematically, but to establish an appropriate level,  
18 because there was risk on the Company to the extent the level  
19 was too high, they couldn't achieve it, they'd only achieve  
20 it every year. There was risk to the customer to the extent  
21 it was too low.

22                   Q.     Is there any incentive with this provision in  
23 here for the Company to engage in off-system sales, and in  
24 the process, sacrifice a better price for their own  
25 consumers?

1           A.       There is a reporting process that's required.  
2 They generally are required by tariffs to associate the  
3 highest cost of gas to the off-system sale so that the  
4 captive customer, the native load, receives the lowest price.  
5 There might be an incremental sale of some type where it was  
6 just a special situation, but Laclede would have to justify  
7 that transaction by transaction.

8           Q.       Okay. So -- so you don't believe that's a  
9 significant risk?

10          A.       As long as it's monitored, I don't believe  
11 that's a significant risk.

12          Q.       Now, have you been involved in -- in these  
13 incentive plans in the past, Mr. Sommerer?

14          A.       Yes, I have.

15          Q.       Have you ever been involved in incentive plans  
16 that you looked back and wished that you'd never seen?

17          A.       Yes, I have.

18          Q.       And can you tell me why in this case, this  
19 one, in your opinion, is one that we won't -- no one is going  
20 to have that kind of reaction to when it comes back around,  
21 and the others -- and that some of the others did? What's  
22 different about this plan that makes it okay as compared to  
23 some of the others that might not have been?

24          A.       Well, I assume you're talking about the gas  
25 supply incentive plan that is contained within the purchase

1 gas adjustment clause, which is different than the off-system  
2 sales discussion that we just had.

3 Q. You know, I could be talking about anything,  
4 so you just -- you just have at it.

5 A. Okay. All right. Well, the plan that's been  
6 proposed by the parties has been in effect for almost three  
7 years. It was originally proposed by the Office of Public  
8 Counsel, and it was a plan that was meant to have some  
9 protection for the customer. To the extent that gas costs  
10 were extremely high, the Company was not allowed to  
11 participate in profit sharing at that time.

12 There were other protections to the extent  
13 that Laclede started making, I believe, the number is \$5  
14 million that the sharing percentage would tail off. We had  
15 lost some of those incentives that the Staff certainly  
16 thought were perverse over the years regarding pipeline  
17 discounts, and some other things that we just did not believe  
18 were fair and were properly structured. And so we're  
19 basically going forward with the Office of Public Counsel's  
20 incentive plan. We believe that it's been a fair plan.

21 I can't say that it would have been proposed  
22 by Staff in direct testimony had there been direct testimony.  
23 I think the Staff would have preferred no incentive, but this  
24 was really something meant to strike a reasonable compromise  
25 with all the parties in this case.

1           Q.       What would have been -- what would be the  
2 problem, in Staff's opinion, of just having off-system sales  
3 ride along into the PGA/ACA process?

4           A.       The Staff has always believed that it's better  
5 to have a symmetrical sharing of risk. And if you put it in  
6 the rate case, the Company certainly is on the hook for that  
7 level, but whatever imputed level is. Let's use a  
8 hypothetical number, \$6 million. The company has imputed  
9 that level into the revenue requirement. If it doesn't make  
10 the level, then it is on the hook for those dollars, and that  
11 really has sort of a negative reinforcement aspect to it.

12                   And the positive reinforcement would be to the  
13 extent they beat the number. I think the Commission approved  
14 a sharing grid as part of MGE's rate case, which is the most  
15 recent rate case before Laclede that we have to look at. And  
16 that was a situation where there is sharing from dollar one.  
17 And I think the Staff has always believed that there's some  
18 level that's already there. You don't have to do much work  
19 for it, certain amount of capacity release that the Company  
20 makes year after year.

21           Q.       Uh-huh.

22           A.       And we just wonder if it's appropriate to  
23 reward the Company for those levels, but I do have to say  
24 that the Commission has approved a sharing grid for MGE.

25           Q.       Okay. And that case, the sharing grid, the

1 off-system sales are riding along on the PGA/ACA side of the  
2 fence?

3 A. That is correct.

4 COMMISSIONER GAW: Anyone else want in on this  
5 discussion before I move on?

6 MS. MEISENHEIMER: Yes. There are a couple of  
7 things that I guess I'd like to say. It's important to know  
8 that these are two different things. The off-system sales  
9 capacity release, which is in this stipulation incorporated  
10 into base rates. The provision that caps the money at -- or  
11 that caps to \$12 million and then shares back with customers  
12 above \$12 million, I view that more as a protection that  
13 would not normally be there under the traditional rate case  
14 process, if you incorporated it into base rates. Say you set  
15 it at \$6 million, then without this cap, the Company would  
16 keep every dime. If it ended up being \$20 million, the  
17 Company keep every dime. So this proposal, I guess we would  
18 keep every dime. So this proposal, I guess we view, more as  
19 a safeguard.

20 With respect to the GSIP, which is -- that's  
21 the gas incentive -- the gas supply incentive that it is  
22 correct, this is a continuation of Public Counsel's -- the  
23 plan that we originally proposed in this case, in the  
24 Company's direct testimony, of course, we didn't file  
25 testimony under the procedural schedule, but the Company came



1 in and asked for a variety of incentive mechanisms that would  
2 take us back to a place that Public Counsel didn't want to  
3 be. And that was where you have a bunch of piece parts and  
4 ultimately the Company could get incentive compensation  
5 without actually reducing the final price of gas to  
6 customers. That was our concern.

7                   And so instead in the stipulation, we've  
8 modified the benchmarks because the price of gas is, as we  
9 all know, it's just going to be higher than it has been in  
10 the past. But there are no other changes. We don't change  
11 the sharing mechanism, or the period of time of sharing. The  
12 company can receive. Again --

13                   COMMISSIONER GAW: Thank you for that  
14 clarification. I guess what have you changed -- what have  
15 you changed in regard to that pricing?

16                   MS. MEISENHEIMER: The low price, I'm trying  
17 to remember if we went to four or four fifty. It's actually  
18 in the -- four to seven fifty is now the range in which if  
19 the Company beats the benchmark price of gas, they can  
20 receive compensation of ten percent of the savings or the  
21 reductions, up to a total of 5 million. And then beyond  
22 that, their share drops to one percent of savings beyond  
23 that. And that is intended to incorporate all things such as  
24 the cost of hedging, okay. So in theory, the goal was that  
25 it be a delivered cost of gas.

1                   COMMISSIONER GAW: Is that everyone's position  
2 on that subject?

3                   MR. SOMMERER: I would just clarify to say the  
4 delivered cost of gas to Staff would be analogous to the city  
5 gate delivered price of gas, which would include  
6 transportation. The Office of Public mechanism as it's been  
7 operating for three years and as it will continue to operate  
8 if the Commission approves this, will only apply to the gas  
9 supply cost, very closely associated with the well head cost  
10 of gas. The transportation cost is not part of this  
11 incentive mechanism.

12                  COMMISSIONER GAW: And I heard someone say  
13 something about cost of hedging. How does that factor into  
14 this?

15                  MR. SOMMERER: Yes. The theory behind that is  
16 hedging is also an actual gas cost. And the Public Counsel's  
17 original plan, and there's no difference with this proposed  
18 plan, it's the same treatment, is to look at hedging just as  
19 a gas supply cost. So that if you went to a producer and you  
20 fixed the cost of gas at \$7, a fixed price, doesn't move,  
21 that could be seen as hedging. Those dollars would flow  
22 through just as an index price would flow through, a market  
23 base price would flow through.

24                  COMMISSIONER GAW: Okay. I understand what  
25 you're saying, except that I'm not sure what -- if everyone

1 is on the same page on that.

2 MS. MEISENHEIMER: We are aware of this -- the  
3 issue with the transportation cost. I probably used bad  
4 terminology because I don't work with this on a day-to-day  
5 basis as Mr. Sommerer does, but it is true that we're on the  
6 same page in terms of the -- that we agree what elements it  
7 includes, and what it doesn't.

8 COMMISSIONER GAW: Okay. And you said the --  
9 the price moved from -- the range is now \$4 to \$7.50?

10 MS. MEISENHEIMER: Yes.

11 COMMISSIONER GAW: What was it.

12 MS. MEISENHEIMER: Three to five.

13 COMMISSIONER GAW: Three to five. And if they  
14 procured gas outside of the upper range, what happens?

15 MS. MEISENHEIMER: Well, the concept is that  
16 there's a price of gas which is -- which is low enough to  
17 where there's no real benefit to consumers if the Company  
18 secures an even lower price of gas. And that's what the \$3  
19 used to represent, the \$4 now represents.

20 We -- and theoretically now, we are used to a  
21 little bit higher price of gas than we were in the past. So  
22 we don't think it's appropriate to compensate the Company  
23 when the price of gas is so low that customers aren't getting  
24 a real meaningful benefit from those activities.

25 On the other hand, there's a price above which

1 it is so painful to consumers to have to bear that price of  
2 gas that the Company should forego any compensation  
3 associated with the gas incentive. And that's what the --  
4 the upper limit represents.

5 COMMISSIONER GAW: And if I'm within the  
6 range, how do I measure my savings.

7 MS. MEISENHEIMER: Within the range, that's  
8 just the band in which you could receive compensation.

9 COMMISSIONER GAW: Yes.

10 MS. MEISENHEIMER: In addition, you have to be  
11 the -- the market price.

12 COMMISSIONER GAW: The market price, which  
13 is -- that's why I'm trying follow what you said earlier.  
14 The market price at what place?

15 MS. MEISENHEIMER: And Mr. Sommerer is more  
16 familiar with it. It's a weighted -- it's weighted based on  
17 the delivery points of Laclede.

18 MR. SOMMERER: That's correct. Those are set  
19 out in tariffs.

20 COMMISSIONER GAW: Okay. And those price  
21 include or exclude the cost of -- of the -- well, let's  
22 strike that.

23 What is included in that price that's being  
24 measured?

25 MR. SOMMERER: The benchmark is made up of

1 physical gas receipt points that Laclede has traditionally  
2 accessed. These would include points that start in  
3 Louisiana, south Texas, the mid-continent area, so you get a  
4 certain percentage of gas supply that's assumed to flow from  
5 those -- those points. That develops your -- your benchmark.

6           You'll compare your actual supply cost to that  
7 as adjusted for any hedging gains or losses that you may  
8 have. So you're really comparing yourself to a first of the  
9 month index as your target, and then if you have hedging  
10 gains, that helps you get below your target. If you have  
11 hedging losses, it brings you above that first of the month  
12 target.

13           COMMISSIONER GAW: Okay. And none of this  
14 agreement has any bearing on the Commission's ability to  
15 examine whether or not appropriate prudent measures were  
16 taken in regard to purchasing and acquiring gas and hedging  
17 appropriately?

18           MR. SOMMERER: We believe that prudence  
19 reviews are applicable in all circumstances --

20           COMMISSIONER GAW: All right.

21           MR. SOMMERER: -- consistent with the last  
22 Commission Order.

23           COMMISSIONER GAW: Okay.

24           MS. MEISENHEIMER: And we would agree.

25           COMMISSIONER GAW: Is that -- there's not any

1 dispute that have from Laclede, either, is there?

2 MR. PENDERGAST: No, your Honor.

3 COMMISSIONER GAW: Okay. All right. Let me  
4 move onto another topic.

5 JUDGE DIPPELL: Commissioner, before you do  
6 that, can we take a little break?

7 COMMISSIONER GAW: Sure.

8 JUDGE DIPPELL: Let's take a little break  
9 until 3:05. Go off-the-record.

10 (A BREAK WAS HELD.)

11 JUDGE DIPPELL: Let's go back on the record.  
12 Okay. Before we resume, I just want to put something in the  
13 heads of the parties for you to be thinking about. And when  
14 we finish with questioning, I'll come back to it, and that is  
15 the tariff issue, I wasn't aware before that we basically  
16 have two tariffs now in this case.

17 One that has been suspended until January  
18 19th, and then when the stipulation was filed, that was filed  
19 as a new set of revised tariffs with an October 1st effective  
20 date. I'm not sure that that's the way we used to handle  
21 these things, but right now that's the way it is in EFIS, so  
22 I will ask you-all to consider whether you think that  
23 tariff -- if the Commission, and I'm assuming that the  
24 Commission will not get an order either rejecting or  
25 approving the tariff out this week, given that as it stands

1 right now, Thursday's agenda has been cancelled.

2                   So I will ask you your thoughts on whether you  
3 think that should be suspended or whether you think it should  
4 be withdrawn, or whether you think that it was a filing error  
5 and should just be corrected. But I will ask you-all to  
6 consider that. Mr. Pendergast.

7                   MR. PENDERGAST: Sure, I'd be happy to respond  
8 to that now, if it is appropriate. First of all, I think in  
9 our last two cases, we had filed tariffs the same time that  
10 we filed the stipulation and agreement, primarily as a matter  
11 of convenience. Otherwise, you're talking about waiting for  
12 a Commission Order, and then you're talking about filing  
13 complaints, tariffs, which are identical to what you've  
14 already gone ahead and filed and asking for --

15                   JUDGE DIPPELL: Okay.

16                   MR. PENDERGAST: -- a suspension.

17                   JUDGE DIPPELL: So you think this is the way  
18 it's been done in the past?

19                   MR. PENDERGAST: It was consistent with what  
20 we've been done in the past. We just never run into the  
21 situation where there was -- in the past, where there was an  
22 inability to get it done by what the requested effective date  
23 was, so that is kind of a new wrinkle, and you know, we can  
24 certainly file something to voluntarily extend those tariffs.  
25 I know that that's been done before.

1 JUDGE DIPPELL: That's an option I hadn't  
2 considered. That might --

3 MR. PENDERGAST: And just request that they be  
4 effective -- if it's not possible to do it this week, do you  
5 know when it might be possible or when it --

6 JUDGE DIPPELL: I would assume that an Order  
7 will be -- before the Commission the following Tuesday, if  
8 there's not one on this Thursday.

9 MR. PENDERGAST: Okay. Well, we're certainly  
10 available to communicate on that, and do what needs to be  
11 done to make sure it works for everybody.

12 JUDGE DIPPELL: Okay. Thank you.  
13 Commissioner Gaw, did you have additional questions?

14 COMMISSIONER GAW: Just a few. Hopefully just  
15 a few. I think you-all have already been through the  
16 redesign. That's something that you're working on, right?  
17 The objective is to make the bill something that's easier for  
18 the customer to understand and translate into something  
19 meaningful for them? Is that one of the objectives anyway?

20 MR. PENDERGAST: Absolutely, Commissioner, and  
21 as part of the process, we're looking at going to envelope  
22 billing, where we would accomplish a number of things. First  
23 of all, if you go to envelope billing, right now we do  
24 postcard billing because of the postcard, there are inherent  
25 limitations on how much information you can put on it.



1 Obviously, those limitations aren't nearly as significant if  
2 you go to envelope billing.

3                   We'll also be in a position, although I think  
4 we make them available now, to provide a return envelope for  
5 customers, which I think a lot of customers view as a  
6 convenience. And yeah, one of the things we're trying to do  
7 is make the bill more meaningful to our customers. And along  
8 those lines, we've actually done some work, I think, or will  
9 be doing some work surveying customers to see what they want  
10 to know rather than just trying to guess what they want to  
11 know.

12                   COMMISSIONER GAW: Okay. Let me -- what's the  
13 time frame on that, by the way? Was there something  
14 contemplated?

15                   MR. PENDERGAST: Yeah, I think we were going  
16 to try and finish that process by April, 2006.

17                   COMMISSIONER GAW: Okay.

18                   MR. PENDERGAST: And implement it by  
19 January 1st, 2007.

20                   COMMISSIONER GAW: All right. So it will  
21 still be another year and two or three months before it would  
22 actually be in effect?

23                   MR. PENDERGAST: That's certainly in the  
24 outside. I think if we get it done sooner, we'd do it  
25 sooner.

1                   COMMISSIONER GAW: Okay. Different question.  
2 This is just for purposes of explanation for my benefit. On  
3 first revised sheet 12, R12A, can you explain D and E to me,  
4 how that -- what that's referring to and what -- when you  
5 have time to turn to it? D says something about the failure  
6 to pay the bill of another customer, unless the customer  
7 whose service is sought to be discontinued receives  
8 substantial benefit and use of the service.

9                   MR. PENDERGAST: Yeah, Commissioner, that's a  
10 provision, I think, that's been in our tariff and also been  
11 in the Commission's rules for a significant period of time,  
12 and it should be distinguished, I think, from perhaps other  
13 provisions you've seen where it seeks to hold somebody -- or  
14 accountable for a bill, even though they didn't benefit from  
15 the service at the time. And I don't believe that there's  
16 any change in that provision from the last case, or from the  
17 Commission's rules.

18                   COMMISSIONER GAW: Okay. But this has --  
19 what's the scenario here that's contemplated in D?

20                   MR. PENDERGAST: I think the concept is  
21 contemplated there is where you have two people who have  
22 received service, both of them have gone ahead and received a  
23 benefit from the service. Another person -- let's say they  
24 just switch, say, okay, I was the customer the last year, now  
25 you're going to be the customer this year. You can't hold me

1 responsible for the bills over the last year, because we got  
2 a new customer now, even though both of us lived in the same  
3 place at the same time. The thought would be you can't avoid  
4 being responsible for the charges that were assessed at that  
5 particular residence simply by switching from one person to  
6 another.

7                   COMMISSIONER GAW: Am I -- is it true that  
8 these -- these provisions listed on 14(b) through (f) are  
9 exceptions to a reason for discontinuance? Since I don't  
10 have the earlier page --

11                   MR. PENDERGAST: Yes.

12                   COMMISSIONER GAW: So in other words, you  
13 can't -- you can't disconnect --

14                   MR. PENDERGAST: For these reasons.

15                   COMMISSIONER GAW: -- for failure to pay the  
16 bill of another customer, unless the service is sought to be  
17 discontinued -- the customer whose service is sought to be  
18 discontinued receives substantial benefit and use of the  
19 service.

20                   MR. PENDERGAST: Exactly, yeah, these are  
21 reasons why you can't, with exceptions to those reasons why  
22 you can't.

23                   COMMISSIONER GAW: It was not totally clear to  
24 me how these fit together. Okay. And then (e) is the  
25 failure of a previous owner or occupant of the premises to

1 pay unpaid, except for the previous occupant remains an  
2 occupant or user. Okay. All right. I understand that  
3 better now.

4                   And then I want to go back to the ROE  
5 question, and I want to know from Staff, using Staff's  
6 capital structure and the revenues that are generated here,  
7 what is this -- what is the approximate ROE that would be  
8 generated, or that would be needed to generate this revenue?

9                   MR. MEYER: I'll defer that. I believe  
10 Mr. Kiebel would like to testify on that topic. I think he  
11 was expecting a question along that line.

12                   (THE WITNESS WAS SWORN.)

13 QUESTIONS BY COMMISSIONER GAW:

14           Q.       State your name and your position.

15           A.       My name is John Kiebel, K-I-E-B-E-L, I'm  
16 Management Analyst III with the Public Service Commission  
17 Staff.

18           Q.       All right. Thank you. Now, Mr. Kiebel, if  
19 you assume Staff's capital structure and the revenues that  
20 are generated here in this settlement, can you give me some  
21 sort of an idea of what the ROE would be?

22           A.       No, I can't. I'm not familiar with the input  
23 of what was used in the -- what was the -- they call the MS  
24 run. I'm not familiar with what was used as far as any type  
25 of a mid-point or an assumed ROE within the purposes of the

1 settlement.

2 Q. You can't make a calculation? Is there  
3 someone that can make some sort of a calculation or  
4 general -- any general idea about what that return on equity  
5 might be?

6 A. As far as who ran the run, I don't really like  
7 how that sounded, but the MS run, I don't know who -- I think  
8 Doyle Gibbs was involved in the input of the run, but I don't  
9 know, maybe Steve Rackers can speak to that as far as what  
10 was put in. I don't know what was used as any type of an  
11 assumption for either -- I could tell what you my low end and  
12 high end was.

13 Q. Well, go ahead and tell me that. I think  
14 that's in the document somewhere. I think that was pointed  
15 out earlier. Go ahead.

16 A. 8.93 was my low end, and my high end was 9.93.

17 Q. Okay. I won't go into right now the rationale  
18 right now on how you arrived there. But somebody from  
19 Staff -- from Staff -- did someone make some sort of an  
20 analysis or could they make some sort of an analysis for me  
21 in regard to what -- assuming the capital structure that  
22 Staff had proposed here and revenue stream generated by this  
23 settlement, about what kind of an ROE, and I'll let you  
24 assume that the debt cost was the same as what had been  
25 proposed by Staff. Who can --

1                   MR. RACKERS: Commissioner, I think to be able  
2 to do that, you'd have to make some determination or you'd  
3 have to start from somewhere as to what the disposition is or  
4 was of the other items that were in dispute in the case, so I  
5 mean, there's -- I mean, I think as we've tried to  
6 characterize it before, the settlement amount is somewhat of  
7 a black box. So you know, it would be maybe Staff's  
8 interpretation, or maybe my personal interpretation, of how  
9 we settled some issues in the case, and you could get an  
10 entirely different answer if the Company wanted to divulge  
11 how it put the issues of the numbers together to get its --  
12 to get to ten and a half.

13                   COMMISSIONER GAW: Well, what does Staff think  
14 that they're settling for on its -- that they're assumption  
15 on what approximate range of an ROE is in this settlement?  
16 Company said what they thought.

17                   MR. RACKERS: I guess I don't recall the  
18 Company saying what they thought, but.

19                   COMMISSIONER GAW: Well, I think they gave a  
20 range.

21                   MR. RACKERS: And I'm comfortable with the  
22 range the Company said. I think they said something like ten  
23 and a half to -- I mean, we started at Staff's high of 9.93,  
24 some kind of a range in there.

25                   MR. KIEBEL: I think Mr. Pendergast earlier

1 said something between 10 and 11, but I don't know if the  
2 court reporter can --

3 COMMISSIONER GAW: I think that's in the  
4 transcript. I'm just trying to gauge -- so you're telling me  
5 that it's not possible for you to -- for us to back out an  
6 ROE based on the revenues that's contemplated out of rates  
7 here, and a capital structure that would -- that I'm giving  
8 you that would be the same as what Staff proposed and cost of  
9 debt being what Staff proposed, that you couldn't calculate  
10 an ROE?

11 MR. RACKERS: Well, I think you'd have to --  
12 it would depend on if I assume that all the expense  
13 adjustments I made in the case, that we start with Staff's  
14 rate base, that it came up with that had exchanged with the  
15 parties, and Staff's income statement and make no changes to  
16 that at all, even though there are 30-some-odd issues in  
17 dispute.

18 COMMISSIONER GAW: Okay.

19 MR. RACKERS: You know, if I have a starting  
20 place, that all the parties agreed on, which I don't, and  
21 which certainly isn't envisioned by the stipulation, then  
22 yes, I could.

23 COMMISSIONER GAW: Okay. Because I'm giving  
24 you -- right now, you've got two unknowns, and I'm leaning  
25 on that, right?

1 MR. RACKERS: Correct.

2 COMMISSIONER GAW: The ROE and the rate base  
3 amount.

4 MR. RACKERS: Well, and the expenses and  
5 revenues.

6 COMMISSIONER GAW: And expenses and revenues,  
7 okay. And the items in all three of those that were in  
8 dispute.

9 MR. RACKERS: Yes, sir.

10 COMMISSIONER GAW: Okay. Did you resolve some  
11 of the expenses and income issues by specifically in the  
12 settlement?

13 MR. RACKERS: No.

14 COMMISSIONER GAW: None of them?

15 MR. RACKERS: Well, it -- it wasn't necessary  
16 to specifically identify a resolution of any particular  
17 interest.

18 COMMISSIONER GAW: Right.

19 MR. RACKERS: I mean issue, in order to get to  
20 the resolution of the case.

21 COMMISSIONER GAW: Okay. What was Staff's  
22 position in regard to -- to its starting -- when they were  
23 dealing with its position that would have been presented in  
24 testimony on -- on those -- on those three unknowns?

25 MR. RACKERS: Staff's revenue requirement



1 recommendation that it exchanged with the parties at the high  
2 end was 5.7 million.

3 COMMISSIONER GAW: 5.7 million.

4 MR. RACKERS: And the rate of return that was  
5 at the high end of equity was 9.93.

6 COMMISSIONER GAW: Nine point -- what was the  
7 rest of it?

8 MR. RACKERS: Nine three.

9 COMMISSIONER GAW: Okay. And what were the  
10 other two factors that produced those -- that result? I know  
11 what your cost of debt was, I know what that is. What about  
12 your rate base?

13 MR. RACKERS: I think I have it here.

14 COMMISSIONER GAW: Your income and expense, if  
15 you have those figures.

16 MR. RACKERS: Commissioner, I'm sorry, I don't  
17 have that here with me, but I can certainly supply that to  
18 you.

19 COMMISSIONER GAW: Okay. Would you do that?

20 MR. RACKERS: Yes.

21 COMMISSIONER GAW: Okay. That would be  
22 helpful.

23 MR. RACKERS: Are you interested in Staff's  
24 run, or that we exchanged, or you just want the rate base  
25 item and the net income?

1                   COMMISSIONER GAW: And you say you have --  
2 that would produce your high end?  
3                   MR. RACKERS: Yes.  
4                   COMMISSIONER GAW: What was your low end?  
5                   MR. RACKERS: Mr. Kiebel will have to help me  
6 out on this.  
7                   MR. KIEBEL: My low end was 8.93, and that I  
8 think generated something of a 527,000 positive or something  
9 like that.  
10                  COMMISSIONER GAW: 527?  
11                  MR. KIEBEL: That's working off of  
12 recollection.  
13                  COMMISSIONER GAW: And was that as a result of  
14 a change in the ROE only?  
15                  MR. KIEBEL: As far as I know, yes.  
16                  COMMISSIONER GAW: Okay. So that would be the  
17 only factor that would move. Okay. That's helpful to me.  
18 So you can give me the other -- the other figures, then I can  
19 see what I can do with the math.  
20                  MR. RACKERS: Sure.  
21                  JUDGE DIPPELL: Commissioner, let me just  
22 clarify to make sure --  
23                  COMMISSIONER GAW: Yes.  
24                  JUDGE DIPPELL: -- and I will --  
25                  COMMISSIONER GAW: Maybe he can do that while

1 I'm asking another question or something. I don't know how  
2 available those figures are.

3 JUDGE DIPPELL: I don't know. Are those  
4 figures that you can get yet today, Mr. Rackers?

5 MR. RACKERS: I can get it today.

6 JUDGE DIPPELL: Okay. Then if you're  
7 confident you know what the Commissioner's asking for, I'll  
8 let it go.

9 COMMISSIONER GAW: I think I'm looking for  
10 rate base.

11 MR. RACKERS: Correct.

12 COMMISSIONER GAW: And then whatever the  
13 income expense.

14 MR. RACKERS: Yes.

15 JUDGE DIPPELL: Okay.

16 COMMISSIONER GAW: And I think that's all I  
17 need.

18 MR. RACKERS: Yes.

19 COMMISSIONER GAW: All right. And then Public  
20 Counsel, did you have any -- what was your low and high end?

21 MS. MEISENHEIMER: I didn't work on that  
22 myself. I think we were on ROE, we were around ten.

23 COMMISSIONER GAW: Okay. Yeah, that's in  
24 here, I think. The other issue, were you very far afield on  
25 the other two issues on -- on expense and income and rate

1 base?

2 MS. MEISENHEIMER: I'm sorry, that's not an  
3 area that I generally work on.

4 COMMISSIONER GAW: That's okay. Do you want  
5 to -- do you want to throw any additional numbers out to me,  
6 Mr. Pendergast?

7 MR. PENDERGAST: I think I'll just stand by  
8 what I said earlier.

9 COMMISSIONER GAW: All right. That's fine.

10 MR. RACKERS: Commissioner, I just want to add  
11 one thing, as I think about this. If I give you Staff's  
12 original rate base and it's income, and then you want to move  
13 from our 5.7 million to what was stipulated to, and the only  
14 change you're going to make is return on equity, you're going  
15 to get a significant movement from that 9.93.

16 COMMISSIONER GAW: I will?

17 MR. RACKERS: Yes, you will.

18 COMMISSIONER GAW: Okay.

19 MR. RACKERS: And that -- that doesn't  
20 contemplate what other changes Staff may have made to its run  
21 in terms of the expenses, revenues, rate base, any of the  
22 other items that go into calculating revenue requirement. If  
23 you're only going to change return on equity, the number  
24 you'll come up with is going to imply a rather large -- well,  
25 depends on whose point of view, but a rather large movement

1 in return on equity. So I just want to warn you of that.

2 COMMISSIONER GAW: That's why I was inviting  
3 Mr. Pendergast to give me some different figures for those  
4 other categories, if he wanted to.

5 MR. PENDERGAST: Yeah, I just agree with  
6 Mr. Rackers. You know, I don't think you can -- you can  
7 attribute all the movement in Staff's case to what we  
8 ultimately agreed upon, nor all the movement in our case from  
9 what we originally filed to return on equity that, you know,  
10 it's made up of resolutions of a variety of different issues.

11 And once again, I think from our perspective,  
12 the way we looked at it, and you can look at it a hundred  
13 different ways, depending on how you put things together, we  
14 think it was a return that was within a range of certainly  
15 north of ten, and I think it would be fair to say that it was  
16 somewhat south of 11. And it probably wouldn't be a  
17 misadventure to say it was probably somewhere in the middle,  
18 which I think if you -- if we had some discussion about NRRI  
19 and where you had authorized returns for gas utilities in the  
20 last quarter, I don't think you would find it being very far  
21 off of what was being done as reported by that particular  
22 group for other gas utilities.

23 COMMISSIONER GAW: Well, do what you can to  
24 get that to me. I understand the caveats. I think that's  
25 all I have. Thank you, Judge.

1 JUDGE DIPPELL: Commissioner Appling, did you  
2 have any questions?

3 COMMISSINER APPLING: I'm good to go. These  
4 guys look like they're worn down.

5 JUDGE DIPPELL: Okay. Well, seeing no more  
6 Commission questions, I will instead ask, since Mr. Rackers  
7 hasn't had a chance to get those numbers, that Staff just  
8 file that as a post-hearing exhibit, which I'll mark No. 4,  
9 and ask for responses from the parties within the next day or  
10 two, or certainly before Thursday's agenda, if there is -- if  
11 one were to get rescheduled, so that we can -- the Commission  
12 could have everything before them. Mr. Pendergast?

13 MR. PENDERGAST: Your Honor, I just want to  
14 make one clarification. Commissioner Murray had asked a  
15 question about the increase in the charge for interruptible  
16 customers, and I had indicated the charge now is a little  
17 north of a dollar, that included both the \$.37 charge plus  
18 the PGA, and that it would go to \$2. What I should have said  
19 is that it would go to \$2 plus the PGA on that, which is  
20 \$.67. I just wanted to make sure that was clarified for the  
21 record.

22 JUDGE DIPPELL: Okay. I will make sure that  
23 she's aware of that clarification.

24 MR. PENDERGAST: Thank you.

25 JUDGE DIPPELL: Would any of the parties like

1 to make additional comments or clarifications? Mr. Meyer,  
2 I'll just start with you.

3 MR. MEYER: I have nothing to add, thank you.

4 JUDGE DIPPELL: All right. Mr. Pendergast,  
5 did you have any further?

6 MR. PENDERGAST: I would like to thank you,  
7 the Commission, for the opportunity to come and explain the  
8 settlement today, and I want to offer our willingness to  
9 cooperate in doing whatever it takes to finalize the process  
10 here. If, as we discussed earlier, it's necessary to do  
11 something about extending the time, we'll certainly cooperate  
12 with that.

13 I would just reemphasize that on that  
14 October 1st date was an important consideration to the  
15 Company, and that, you know, from a financial standpoint, we  
16 think it's a very modest increase, and one of the reasons we  
17 were able to agree to a modest increase is the fact that it  
18 was going to be hopefully implemented early, as soon as the  
19 Commission approves it. So I'll say no more on that. But  
20 we'll certainly cooperate in doing whatever we need to do.

21 JUDGE DIPPELL: All right. Anything further  
22 from Office of Public Counsel?

23 MR. DANDINO: Ms. Meisenheimer had one more  
24 quick clarification.

25 JUDGE DIPPELL: Okay.

1 MS. MEISENHEIMER: An issue that we weren't  
2 questioned over, but something that was important to our  
3 office in terms of the benefit to customers. The customer  
4 charge for residential and small business is not increasing,  
5 and I think Mr. Dandino point that had out in his opening  
6 statement. However, a related issue is the ISRS.

7 Since the ISRS is tied to the relative  
8 customer charges, and after looking at the numbers that, you  
9 know, we discussed in conferences, it appeared that the ISRS  
10 was disproportionally collecting from residential customers  
11 and small business. So one of the benefits of the issue of  
12 the customer charge not increasing from our perspective is  
13 that it does not do any worse in terms of future ISRS  
14 charges.

15 JUDGE DIPPELL: Did you have a follow-up,  
16 Commissioner?

17 COMMISSIONER GAW: Yeah, sorry. Just so I'm  
18 trying to understand, Ms. Meisenheimer. Are you saying that  
19 you have made some -- any kind of correction in new ISRS  
20 filings that -- that on a going-forward basis would not have  
21 the same in the view of Public Counsel disproportionally  
22 impact on residential and small business customers?

23 MS. MEISENHEIMER: To the extent that in  
24 this -- in this stipulation, there are provisions for some of  
25 the larger customers to get increases to their customer



1 charges, that lessens the effect of ISRS charges being  
2 disproportionally collected from customers, from residential  
3 and small -- small business.

4 COMMISSIONER GAW: So you didn't impact the  
5 ISRS mechanism itself, but the customer charge, the monthly  
6 charge went up on others besides residential and small  
7 businesses. That's what you're saying?

8 MS. MEISENHEIMER: That's my understanding,  
9 yes, or that --

10 MR. PENDERGAST: Yeah, if I could just to add  
11 to what Ms. Meisenheimer is saying, the rate design  
12 contemplated by the ISRS mechanism allows you to collect  
13 those ISRS charges, either based on the customer charges on a  
14 flat customer charge basis, every customer no matter how big  
15 or small gets the same, or in proportion to how one group  
16 customer charge compares to another group.

17 And I think what we're saying here is that  
18 because the customer charge residential and the small  
19 commercial remain the same while the customer charges for  
20 some of the larger folks went up, in the future, they will  
21 bear a bit more of that ISRS charge from a rate design  
22 perspective than they did in the past. Right now, for  
23 example, the largest pay about a hundred times more of the  
24 ISRS charge because their customer charge is a hundred times  
25 bigger. That proportion will go ahead and increase a little

1 bit more, so they will bear a little bit more in the future.

2 COMMISSIONER GAW: I'm sorry, I didn't put  
3 that together. The ISRS charge is based upon that customer  
4 charge --

5 MR. PENDERGAST: Yes.

6 COMMISSIONER GAW: -- that's what you're  
7 saying? I'm following you better now.

8 MS. MEISENHEIMER: So the fact that the  
9 residential and the small business customer charges are not  
10 increasing is, in our view --

11 COMMISSIONER GAW: Is significant in regard to  
12 the ISRS?

13 MS. MEISENHEIMER: Right, not with respect to  
14 the customer charge, but it has its impact also on the ISRS.

15 COMMISSIONER GAW: Now I'm following you.  
16 Thank you for that explanation.

17 JUDGE DIPPELL: Okay. Is there anything  
18 further? Seeing nothing further, then, we will conclude the  
19 hearing. Thank you. We're off-the-record.

20 WHEREUPON, the recorded portion of the hearing  
21 was concluded.

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INDEX

2	Statement by Mr. Meyer	7
	Statement by Mr. Pendergast	11
3	Statement by Mr. Dandino	18
	Statement by Mr. Schaefer	20
4	Statement by Ms. Schroder	21
	Questions by Commissioner Clayton	23
5	Questions by Chairman Davis	38
	Questions by Commissioner Murray	49
6	Questions by Commissioner Gaw	78
	Questions by Commissioner Clayton	100
7	Questions by Commissioner Gaw	102
8		
	STAFF'S EVIDENCE:	
9	Steve Rackers:	
	Questions by Commissioner Clayton	53
10	Questions by Commissioner Murray	61
	Questions by Chairman Davis	61
11	Questions by Commissioner Appling	63
	Questions by Commissioner Gaw	157
12		
	Gay Fred:	
13	Questions by Commissioner Clayton	69
	Questions by Chairman Davis	71
14	Questions by Commissioner Murray	73
	Questions by Commissioner Gaw	139
15		
	Greg Meyer:	
16	Questions by Commissioner Gaw	129
17	Tom Imhoff:	
	Questions by Commissioner Gaw	150
18		
	Dave Sommerer:	
19	Questions by Commissioner Gaw	161
20	John Kiebel:	
	Questions by Commissioner Gaw	185
21		
22		
23		
24		
25		

1	INDEX (con't)	
2		
3	PUBLIC COUNSEL'S EVIDENCE:	
	Barb Meisenheimer:	
4	Questions by Chairman Davis	39
	Questions by Commissioner Gaw	138
5		
6		
7	DNR'S EVIDENCE:	
	Brenda Wilbers:	
8	Questions by Commissioner Gaw	122
9		
10		
11	EXHIBITS INDEX	
	EXHIBIT NO. 1:	
12	Stipulation of the parties	6
13	EXHIBIT NO. 2:	
	Direct Testimony of Laclede	6
14		
	EXHIBIT NO. 3:	
15	Staff Affidavits	6
16	EXHIBIT NO. 4:	
17	Staff's Rate Base Information	*
18		
19		
20		
21		
22		
23		
24		
25		

**Laclede Gas Company / Missouri Gas Energy**  
**GR-2017-0215 / GR-2017-0216**

**Response to OPC Data Request 1081**

**Question:**

In OPC DR 1001 OPC asked Laclede to reconcile and state the reason(s) for the balances for Laclede Gas' (LAC) accounts in Data Request 1000 that are different from the amounts that were reported in Laclede's SEC Form 10-K for its fiscal year ended September 30, 2016. LAC witness Buck responded that "there would be no eliminations at the Laclede Gas Company level; even transactions and balances with affiliates remain in those stand-alone financial statements. The only on-top entries (done in Hyperion Financial Close Management and not in the general ledger) for the 10-K (balance sheet or income statement) are reconciled and explained in the attachment." In the Excel file provided in response to OPC DR 1001 Laclede stated that its accumulated deferred income taxes (ADIT) balance for LAC at September 30, 2016 was \$457.9 million and for MGE was \$89.3 million. In its direct filing LAC proposes to only offset rate base by \$206.9 million of ADIT and MGE only by \$28.5 million of ADIT.

1. Please reconcile the differences between what Laclede reported to the SEC at Sep 30, 2016 and what LAC is reporting to the Commission is the ADIT at December 31, 2016.
2. For any differences in these amounts, please provide each and every authoritative guidance on which LAC believes justifies its proposed level of ADIT.
3. Please state the specific reasons why OPC would be incorrect, if it would be incorrect, if it proposed for LAC an ADIT of \$457.9 million and an ADIT for MGE of \$89.3 million.
4. Please state why LAC and MGE used the tax rate of 37.761% for ADIT instead of 38.3886, which is the effective federal and Missouri tax rate?
5. Did LAC and MGE use this 37.761% tax rate in any previous case before the Commission? If yes, please state the case number. If not, why not?

**Response:**

1. The ADIT reported to the SEC at September 30, 2016 is irrelevant for purposes of what LAC is reporting to the Commission at December 31, 2016. The SEC reporting includes items that are not part of rate base.
2. This is not applicable based on the response to 1 above.
3. The proposed amounts are based on the September 30, 2016 balances reported to the SEC and the rate case base period is a December 31, 2016 period. Consequently, ADIT balances at December 31, 2016, that LAC reported to the Commission for the rate base would be appropriate.
4. The 37.761% tax rate is used for SEC filing purposes.
5. No. This rate has been used for SEC purposes the last several years. Prior to that, the rate would have been different. As the footprint and business activities of Laclede Gas (now Spire Missouri) has changed and evolved over time. The prior

rate case for Laclede was based on just the eastern side of the state. So the activities outside of Missouri for storage, etc. would have changed over time.

Signed by: Glenn Buck



<b>III. MEMORANDUM OF LAW</b> .....	56
A. <i>What is Jurisdiction?</i> .....	56
B. <i>The Jurisdiction of the Public Service Commission</i> .....	57
C. <i>Regulation of the Natural Gas Industry</i> .....	64
D. <i>The Commission's Jurisdiction over Spire and the Acquisitions</i> .....	65
1. § 393.190.1, RSMo.....	68
2. § 393.190.2, RSMo.....	71
3. § 393.250, RSMo.....	72
4. § 386.390.1, RSMo.....	74
<b>IV. CONCLUSIONS AND RECOMMENDATIONS</b> .....	76
A. <i>Conclusions</i> .....	76
B. <i>Recommendations</i> .....	77

**I. INTRODUCTION**

***A. Summary of Staff's Findings and Recommendations:***

Based on the information it has obtained and reviewed to date, Staff reports that it has determined (1) that Spire has not complied with all of the conditions it willingly accepted, and which the Commission approved by order, in Case No. GM-2001-342; and (2) that the acquisitions offer no benefits to Missouri ratepayers and many potential detriments. Staff recommends that the Commission take action (1) to sanction Spire for its failure to comply with certain of the conditions imposed in Case No. GM-2001-342; and (2) to protect Missouri ratepayers from the negative consequences of Spire's actions.

***B. How Did This Investigation Come About?***

**1. Office of Public Counsel's Motion to Open Investigation**

On June 16, 2016, the Office of the Public Counsel ("OPC") filed its *Motion to Open an Investigation* in response to the announcement on April 26, 2016, by Spire, Inc. ("Spire") – then known as The Laclede Group, Inc.<sup>2</sup> -- of the acquisition from

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<sup>2</sup> The name change was announced on April 28, 2016.



Sempra U.S. Gas and Power of EnergySouth, Inc., a holding company owning two natural gas utilities, Mobile Gas in Alabama and Willmut Gas in Mississippi, for \$344 million.<sup>3</sup> OPC noted that Spire had acquired another Alabama natural gas utility, Alagasco, in 2014.<sup>4</sup> In its motion, OPC moved the Commission to open a docket to investigate whether or not Spire had sought, or would seek, prior approval for the two acquisitions; whether either or both were, or would be, detrimental to the public interest; and whether the proposed acquisition of EnergySouth would impact the Commission's access to information; the credit rating or financial stability of Spire; cost allocations among the affiliated companies; or the reporting requirements contained in the *Stipulation and Agreement* approved by the Commission in Case No. GM-2001-342.<sup>5</sup>

Spire opposed OPC's *Motion*, asserting that it is not subject to the Commission's regulatory jurisdiction and that its acquisition of non-Missouri public utilities is not a matter subject to the Commission's jurisdiction.<sup>6</sup> Spire further asserted that there is no evidence that either acquisition could have or would have any impact on the areas of OPC's concern or that either was or would be detrimental to the public interest.<sup>7</sup> In particular, Spire expressed amazement that OPC would raise the issue of the

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<sup>3</sup> *Public Counsel's Motion to Open an Investigation*, filed June 16, 2016.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*; referring to *In the Matter of the Application of Laclede Gas Company for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries*, Case No. EM-2001-342 (*Unanimous Stipulation and Agreement*, filed July 9, 2001).

<sup>6</sup> *Spire Inc.'s Verified Response Opposing Public Counsel's Motion to Open an Investigation*, filed June 27, 2016.

<sup>7</sup> *Id.*

Alagasco acquisition for the first time now, when it had been fully briefed on it as long ago as May 27, 2014.<sup>8</sup>

Both OPC and Staff replied to Spire's *Verified Response*. OPC directed attention to the Commission's order opening a similar investigation into the announced acquisition by Great Plains Energy, Inc., of Westar, Inc., despite Great Plains' opposition on similar grounds.<sup>9</sup> Staff replied that an investigation would be prudent.<sup>10</sup> Both OPC and Staff echoed the Commission's explanation, from its order in the Great Plains-Westar case, that jurisdiction over either the holding company or the acquisition was unnecessary for the purposes of an investigation.<sup>11</sup>

## 2. The Commission's Order Opening This Investigation

On July 20, 2016, the Commission granted OPC's *Motion*.<sup>12</sup> The Commission's *Order* authorizing this investigation is necessarily its charter and defines the scope, focus and expected product of Staff's investigation.

The Commission stated that it "has a duty to determine whether the transactions threaten Missouri ratepayers."<sup>13</sup> In Ordered Paragraph 2, the Commission expressly directed Staff:

2. The Commission's staff ("Staff") is directed to investigate, and file a report including Staff's position on, whether the transactions described in the body of this order did or will:

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<sup>8</sup> *Id.*

<sup>9</sup> *Public Counsel's Reply*, filed July 7, 2016, citing *In the Matter of Great Plains Energy, Inc.'s Acquisition of Westar Energy, Inc., and Related Matters*, Case No. EM-2016-0324 (*Order Granting Leave to File Reply Late, Granting Staff's Motion to Open an Investigation, and Directing Filing*, issued June 8, 2016).

<sup>10</sup> *Staff's Response to Commission Order*, filed July 11, 2016.

<sup>11</sup> *Public Counsel's Reply*, pp. 1-2; *Staff's Response*, pp. 2-3

<sup>12</sup> *Order Granting Motion to Open an Investigation and Directing Filing*, issued July 20, 2016.

<sup>13</sup> *Id.*, at p. 5.

- a. Have any effect on Missouri ratepayers;
- b. Cause any detriment to the public interest; and
- c. Are subject to the Commission's jurisdiction.

\* \* \*

4. Any report described in ordered paragraph 2 ... shall be filed no later than September 2, 2016.

The Commission specifically did not rule on whether or not it has jurisdiction over the proposed transaction to take any action other than to investigate.<sup>14</sup> However, the Commission did say:<sup>15</sup>

Spire argues that no mere agreement<sup>16</sup> can bestow jurisdiction upon the Commission because the sole source of the Commission's jurisdiction is the statutes.

But, as OPC notes, the cited provisions are not mere promises. They are statutorily authorized orders that the Commission made on Spire's motion. The Court of Appeals has held that such conditions constitute requirements that are subject to enforcement before the Commission.<sup>17</sup>

### 3. Spire's Motion for Clarification or Reconsideration

On July 29, 2016, Spire moved for clarification or reconsideration, requesting that the Commission "[either] withdraw those portions of its Order that seek to construe the meaning and intent of Section 5 of the Holding Company Agreement, [or] it should reconsider those portions of its Order [and upon] reconsideration, the Commission should find and conclude that Section 5 was never intended to subject, and does not

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, at pp. 3-4.

<sup>16</sup> Referring to the *Unanimous Stipulation and Agreement* approved by the Commission in Case No. GM-2001-342.

<sup>17</sup> *Id.*, at pp. 2-3 (footnotes omitted), citing *State ex rel. Laclede Gas Co. v. Public Serv. Comm'n of Mo.*, 392 SW3 24, 35 (Mo. App., W.D. 2012).

have the effect of subjecting, either the Alagasco or EnergySouth transactions to the Commission's jurisdiction since neither of those transactions would make Spire a registered holding company or subject the intrastate facilities of Laclede Gas to FERC jurisdiction."<sup>18</sup>

The Commission denied Spire's motion on August 17, 2016, stating "Spire argues that the order pre-judges, and constitutes an advisory opinion on, whether the Commission has jurisdiction over those transactions. The Commission has not made, is not making, and will not make that determination in this file."<sup>19</sup>

**C. The Focus and Method of Staff's Investigation:**

1. Questions Presented

OPC provided a specific list of questions for investigation in its *Motion to Open Investigation*, which the Commission specifically stated it was granting in its *Order Opening Investigation* of July 20, 2016:

1. Whether the terms of the unanimous stipulation and agreement required Spire (formerly named The Laclede Group) to seek Commission approval prior to the 2014 acquisition of Alagasco or the announced acquisition of EnergySouth;
2. Whether Spire sought Commission approval prior to the 2014 acquisition of Alagasco;
3. Whether Spire will seek Commission approval prior to the acquisition of EnergySouth;

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<sup>18</sup> *Spire Inc.'s Request for Clarification or, in the Alternative, Motion for Reconsideration*, p. 7.

<sup>19</sup> *Order Denying Motion for Clarification or Reconsideration*, p. 1.

4. Whether the acquisition of Alagasco was detrimental to the public or otherwise impacted Missouri customers;
5. Whether the acquisition of EnergySouth will be detrimental to the public or otherwise impact Missouri customers;
6. Whether the acquisition of EnergySouth will impact the Commission's access to information;
7. Whether the acquisition of EnergySouth will impact the credit rating or financial stability of Spire as it relates to the cost of capital;
8. Whether the acquisition of EnergySouth will impact the cost allocations among the affiliated companies, and;
9. Whether the acquisition of EnergySouth will impact the reporting requirements contained in the stipulation and agreement in GM-2001-342.

As already noted, the Commission gave specific direction to Staff in its *Order*. In Ordered Paragraph 2, the Commission directed Staff as follows:

2. The Commission's staff ("Staff") is directed to investigate, and file a report including Staff's position on, whether the transactions described in the body of this order did or will:

- a. Have any effect on Missouri ratepayers;
- b. Cause any detriment to the public interest; and
- c. Are subject to the Commission's jurisdiction.

\* \* \*

4. Any report described in ordered paragraph 2 ... shall be filed no later than September 2, 2016.

Staff will also examine the issue of Spire's compliance with the *Unanimous Stipulation and Agreement* that conditioned Laclede's reorganization as a holding company in this report.

## 2. Methodology

As in its investigation of Great Plains' acquisition of Westar, Staff moved on July 28, 2016, for an order reducing the allowed interval in which to respond to DRs.<sup>20</sup> Spire filed a *Response* on August 1, 2016,<sup>21</sup> and an *Amended Response* on August 2, consenting to an order shortening the objection and response intervals to 5 and 8 business days, respectively.<sup>22</sup> The Commission did so on August 3, 2016, deeming all DRs already served to be served as of the date of the Commission's *Order*.

Staff subjected the information it gathered to multi-modal expert analysis and developed a consensus opinion on each of the questions presented for investigation. By "multi-modal expert analysis," Staff means the collaboration of experts from multiple disciplines. As directed by the Commission, Staff has embodied its findings, conclusions and recommendations in a report. Also as directed by the Commission, this investigation report includes a legal analysis of the Commission's jurisdiction over the transactions.

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<sup>20</sup> *Staff's Motion to Shorten Time to Respond and Object to Data Requests and Motion for Expedited Treatment*, filed July 28, 2016.

<sup>21</sup> *Response to Staff's Motion to Shorten Data Request Response Times*, filed August 1, 2016.

<sup>22</sup> *Amended Response to Staff's Motion to Shorten Data Request Response Times*, filed August 2, 2016.

## II. FINDINGS

### A. *Undisputed Facts:*

Spire is a publicly-traded Missouri general business corporation in good standing and a public utility holding company; its principal place of business is 700 Market Street, 6<sup>th</sup> Floor, St. Louis, Missouri 63101 and its registered agent is Ellen Theroff, 700 Market Street, 6<sup>th</sup> Floor, St. Louis, Missouri 63101.<sup>23</sup> Prior to April 28, 2016, Spire was named The Laclede Group, Inc.<sup>24</sup> According to Spire, it is a public utility holding company whose primary business is the safe and reliable delivery of natural gas service.<sup>25</sup> Spire is a public utility holding company and obtained an exemption from FERC regulation under the LDC exemption to the Public Utility Holding Company Act of 2005, which was enacted as part of the Energy Policy Act of 2005.<sup>26</sup> Among other subsidiaries, Spire owns and controls two natural gas utilities that are subject to regulation in Missouri by this Commission, Laclede Gas Company (“Laclede”) and Missouri Gas Energy (“MGE”).<sup>27</sup> Laclede is a natural gas distribution utility system and serves customers in St. Louis and eastern Missouri.<sup>28</sup> MGE, acquired from Southern Union Company on September 1, 2013, is also a natural gas distribution utility system in Missouri and serves customers in Kansas City and western Missouri as a

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<sup>23</sup> Records of the Missouri Secretary of State; The Laclede Group, Inc., Form 10-K, filed November 24, 2015.

<sup>24</sup> *Id.*

<sup>25</sup> *Laclede to Acquire Parent Company of Mobile Gas and Willmut Gas*, April 26, 2016 Press Release on Spire website.

<sup>26</sup> *Spire Inc.'s Verified Response Opposing Public Counsel's Motion to Open an Investigation*, filed June 27, 2016.

<sup>27</sup> The Laclede Group 10-K *supra*.

<sup>28</sup> *Id.*

division of Laclede.<sup>29</sup> Together, Laclede and MGE serve 1.1 million Missouri customers and constitute the largest natural gas utility in Missouri.

Spire, then known as The Laclede Group, Inc., was formed by a restructuring of Laclede in 2001, pursuant to which Laclede sought, and obtained, authority from this Commission to restructure as a holding company and wholly-owned operating subsidiary.<sup>30</sup> The Commission approved that reorganization by order on August 14, 2001, in Case No. GM-2001-342.<sup>31</sup> By the same order, the Commission also approved the *Unanimous Stipulation and Agreement*, filed on July 9, 2001, and executed on behalf of Laclede by Michael C. Pendergast and on behalf of Spire by Gerald T. McNeive, Jr., which sets out and applies a number of conditions to the reorganization.<sup>32</sup> In particular, Section V of the *Unanimous Stipulation and Agreement* provides:

#### **COMMISSION AUTHORIZATION CONDITIONS**

1. The Laclede Group, Inc. agrees that it will not, directly or indirectly, acquire or merge with or allow itself to be acquired by or merged with, a public utility or the affiliate of a public utility, where the affiliate has a controlling interest in a public utility, or seek to become a registered holding company, or take any action which has a material possibility of making it a registered holding company or of subjecting all or a portion of its Missouri intrastate gas distribution operations to FERC jurisdiction, without first requesting and, if considered by the Commission, obtaining prior approval from the Commission and a finding that the transaction is

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<sup>29</sup> *Id.*

<sup>30</sup> *In the Matter of the Application of Laclede Gas Company for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries*, Case No. GM-2001-342 (*Verified Application*, filed December 1, 2000).

<sup>31</sup> *In the Matter of the Application of Laclede Gas Company for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries*, Case No. GM-2001-342 (*Order Approving Stipulation and Agreement and Approving Plan to Restructure*, issued August 14, 2001).

<sup>32</sup> *In the Matter of the Application of Laclede Gas Company for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries*, Case No. GM-2001-342 (*Unanimous Stipulation and Agreement*, filed July 9, 2001).



not detrimental to the public, provided that for purposes of acquisitions by the Holding Company only, public utility shall mean a natural gas or electric public utility.

Laclede is a Missouri general business corporation in good standing, incorporated on March 2, 1857, as Laclede Gas Light Company; its principal place of business is located at 700 Market Street, 6<sup>th</sup> Floor, St. Louis, Missouri 63101 and its registered agent is Ellen Theroff, 700 Market Street, 6<sup>th</sup> Floor, St. Louis, Missouri 63101.<sup>33</sup> MGE is a registered fictitious name under which Laclede does business at 1117 South Pleasant Street, Independence, Missouri. MGE was a division of Southern Union Company prior to its acquisition by Laclede and is now a division of Laclede.<sup>34</sup> Laclede is in the business of using gas plant<sup>35</sup> that it owns, controls and operates to distribute natural gas to the public at retail for light, heat and power. Laclede consequently, is a gas corporation and a public utility within the intendments of the Public Service Commission Law.<sup>36</sup>

Alagasco is a public utility engaged in the purchase, retail distribution and sale of natural gas principally in central and northern Alabama, serving more than 0.4 million residential, commercial and industrial customers with primary offices located in Birmingham, Alabama. Spire purchased 100% of the common shares of Alagasco from

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<sup>33</sup> Records of the Missouri Secretary of State; The Laclede Group, Inc., Form 10-K, filed November 24, 2015.

<sup>34</sup> *In the Matter of the Joint Application of Southern Union Company d/b/a Missouri Gas Energy, The Laclede Group, Inc. and Laclede Gas Company for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets and Liabilities from Southern Union Company to Laclede Gas Company and, in connection therewith, certain other Related Transactions*, Case No. GM-2013-0254 (*Joint Application*, filed January 14, 2013), ¶¶ 4 and 16.

<sup>35</sup> Section 386.020(19), RSMo.: "Gas plant' includes all real estate, fixtures and personal property owned, operated, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power[.]"

<sup>36</sup> Section 386.020, (18) and (43), RSMo.

Energen Corporation on August 31, 2014. Spire did not seek or obtain prior approval from this Commission for the acquisition and Staff did not make any filings at the time raising the issue. However, the transaction was not a secret:

Spire “took steps to keep the Commission and other stakeholders fully informed about the existence, nature, and merits of the Alagasco transaction. These steps included efforts to alert Commission and OPC personnel regarding the terms of the proposed acquisition before it was publicly announced. The Company’s President and CEO, Suzanne Sitherwood, also formally briefed the Commission, Staff and OPC on the Alagasco acquisition during an on-the-record presentation<sup>37</sup> made on May 27, 2014, which was held as a series of follow-up meetings on the MGE acquisition that had been completed the year before. In addition to describing the key operational, geographic, and others features of the acquisition that made it a good fit for the Company and its existing and future customers, Ms. Sitherwood and other senior executives of the Company were available to answer, and did answer, questions about the transaction.<sup>38</sup>

EnergySouth, Inc., is a unit of Sempra Energy.<sup>39</sup> EnergySouth owns Mobile Gas Service Corporation and Willmut Gas and Oil Company, two gas utilities serving about 85,000 customers in Alabama and 19,000 customers in Mississippi, respectively.<sup>40</sup> Spire has entered into an agreement to acquire EnergySouth for \$344 million.<sup>41</sup> The transaction would result in an increase of about 7% in Spire’s 1.56 million customer base, and a similar percentage increase to Spire’s current \$5.2 billion enterprise value.<sup>42</sup>

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<sup>37</sup> In fact, the witnesses were not sworn.

<sup>38</sup> *Spire Inc.’s Verified Response Opposing Public Counsel’s Motion to Open an Investigation*, filed June 27, 2016, ¶ 8.

<sup>39</sup> *Id.*, ¶ 2.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

**B. Effects on Missouri Ratepayers:**

1. The Alagasco Acquisition:

Staff is of the opinion that the Alagasco acquisition has had effects on Missouri ratepayers, including higher rates due to the effects of increased holding company debt on Laclede Gas' credit rating; direct allocation of acquisition and transition costs; decreased customer service quality, including billing errors and the ongoing loss of experienced customer service representatives in the call centers. As noted elsewhere in this report, it appears that services have been provided by Laclede Gas Company to Spire and Alagasco in connection with this acquisition and that costs have been allocated to Laclede Gas Company in connection with this acquisition, all in violation of Commission Rule 4 CSR 240-40.015, pertaining to affiliate transactions.

2. The EnergySouth Acquisition:

Staff is of the opinion that the EnergySouth acquisition will have effects on Missouri ratepayers similar to those that the Alagasco acquisition has had.

**C. Compliance with the Conditions Imposed in Case No. GM-2001-342:**

In 2001 the Commission authorized Laclede Gas Company to restructure itself as a holding company, the Laclede Group, Inc. (now Spire), and the regulated public utility company became a subsidiary. The Commission approved that reorganization by order on August 14, 2001, in Case No. GM-2001-342. By the same order, the Commission also approved the *Unanimous Stipulation and Agreement*, filed on July 9, 2001, and executed on behalf of Laclede Gas Company by James M. Fischer, which sets out and applies a number of conditions to the reorganization.

1. Compliance with Section III, Financial Conditions:

Staff's investigation of the proposed transaction included verification of whether The Laclede Group, Inc. ("Spire") and Laclede Gas Company ("Laclede Gas"; jointly "the Companies") have complied and continue to comply with the conditions agreed to in Case No. GM-2001-342. Staff issued Data Request No. 11 requesting that the Companies demonstrate how they have complied with each of the conditions. The Companies' response, which was provided by Mr. Glenn Buck, is attached to this report as Schedule 14. Staff reviewed and analyzed other information, both public and highly confidential, to determine if it agreed with the Companies' representations of compliance. Staff will address each condition individually.

Financial Condition 1: The Laclede Group, Inc. represents that it does not intend to take any action that has a material possibility of having a detrimental effect on Laclede Gas Company's utility customers, but agrees that, should such detrimental effects nevertheless occur, nothing in the approval or implementation of the Proposed Restructuring shall impair the Commission's ability to protect such customers from such detrimental effects.

Staff's Response: The Companies' response to Staff Data Request No. 11 does not directly address this condition. However, it appears from the Companies' claim that it has complied with all of the other financing conditions, they don't believe these acquisitions had a material possibility of having a detrimental impact on Laclede Gas Company's customers. Although Laclede Gas Company has continued to have access to the funds it produces and secures, the finding as to whether this is still at a fair and reasonable cost in light of the additional debt carried by Spire will be determined in

subsequent rate cases involving the Laclede Gas and MGE divisions of Laclede Gas Company.

Financial Condition 2: Laclede Group, Inc. will not pledge Laclede Gas Company's common stock as collateral or security for the debt of the Holding Company or a subsidiary without Commission approval.

Staff's Response: Staff is not aware of any situation in which Laclede Group or any of its other subsidiaries have issued debt and pledged Laclede Gas Company's common stock as collateral or security. Laclede Group has not indicated it will violate this agreement. The Companies provided the following response to Staff Data Request No. 11:

- Neither Spire/LG nor Laclede Gas have pledged Laclede Gas' common stock as collateral or security for the debt of LG or a subsidiary of LG without Commission approval;

Financial Condition 3: Laclede Gas Company will not guarantee the notes, debentures, debt obligations or other securities of the Holding Company or any of its subsidiaries, or enter into any "make-well" agreements without prior Commission approval.

Staff's Response: Staff is not aware of any violation of this agreement. Laclede Gas has not indicated it will violate this agreement. The Companies provided the following response to Staff Data Request No. 11:

- Laclede Gas has not guaranteed the notes, debentures, debt obligations, or other securities of LG or any of its subsidiaries, or enter into any "make-well" agreements without prior Commission approval.

Financial Condition 4: The Laclede Group, Inc. agrees to maintain consolidated common equity of no less than 30 percent of total consolidated capitalization and

Laclede Gas Company agrees to maintain its equity at no less than 35% of its total capitalization, unless they are unable to do so due to events or circumstances beyond their control, including, but not limited to, acts of God, war, insurrection, strikes, civil unrest, material changes in market conditions that could not have been reasonably anticipated, or changes in the application, character or impact of laws, taxing requirements, regulations, or regulatory practices and standards governing the Company's regulated operations. Total capitalization is defined as common equity, preferred stock, long-term debt and short-term debt, excluding short-term debt supporting natural gas and propane inventories, purchased gas costs and cash working capital. Common equity is defined as par value of common stock, plus additional paid in capital, plus retained earnings, minus treasury stock. The Laclede Group, Inc. and Laclede Gas Company agree to notify the Staff and Public Counsel in the event they become aware of any material possibility that either or both companies will be unable to maintain their respective equity ratios. In the event either Company's equity ratio should fall below these specified levels, Laclede Gas Company shall file a plan with the Commission within 90 days of such occurrence proposing alternatives for raising the ratios to or above the levels specified herein.

Staff's Response: As of June 30, 2016, Spire had a consolidated common equity ratio of 49% and Laclede Gas had a common equity ratio of 57%. The Companies provided the following response to Staff Data Request No. 11:

- Spire has maintained a consolidated equity well in excess of 30 percent of its total permanent consolidated capitalization and Laclede Gas Company has maintained its equity at a level well in excess of 35% of its total capitalization.

- LG and Laclede Gas Company remain prepared to notify the Staff and Public Counsel in the event they become aware of any material possibility that either or both companies would be unable to maintain their respective equity ratios. No such circumstances have arisen in the 15 years since this commitment.
- Laclede Gas Company remains prepared to file a plan with the Commission within 90 days if either Spire's or Laclede Gas' equity ratio falls below these specified levels wherein it would propose alternatives for raising the ratios to or above the levels specified herein. No such circumstances have arisen in the 15 years since this commitment was made.

Spire is expected to continue to meet this condition after completion of the permanent financing issued to fund the EnergySouth transaction. As Laclede Gas Company is not issuing any capital for purposes of the proposed transaction, its common equity ratio would not be directly impacted by the transaction financing.

Financial Condition 5 -- Laclede Gas Company shall submit quarterly to the Financial Analysis Department of the Missouri Public Service Commission certain key financial ratios that will be calculated, to the extent practical, consistent with the methodology employed by Standard and Poor's Credit Rating Service. These key financial ratios shall include:

- (a) Pre-tax interest coverage;
- (b) After-tax coverage of interest and preferred dividends;
- (c) Funds flow interest coverage;
- (d) Funds from operations to total debt;
- (e) Total debt to total capital (including preferred); and
- (f) Total common equity to total capital.

Staff's Response: Financial Analysis Staff reviewed the monthly surveillance reports every quarter, starting from the March 2014 report (approximate time of the announcement of the Alagasco transaction) to the June 2016 report. Laclede Gas Company provided the ratio calculations for most quarters, except March 2014,

June 2015 and June 2016. Consequently, Laclede Gas Company is not in full compliance with this condition for the period Staff reviewed.

Financial Condition 6: Laclede Gas Company's total long-term instruments payable at periods of more than twelve months shall not exceed Laclede Gas Company's regulated rate base.

Staff's Response: As of Laclede Gas' June 2016 surveillance report it had a total rate base of approximately \$1,917 million. Laclede Gas' total long-term debt outstanding was approximately \$808.3 million as of June 30, 2016. In response to Staff Data Request No. 11, Laclede Gas responded:

- Laclede Gas has kept its commitment that its total long-term instruments payable at periods of more than twelve months not exceed Laclede Gas Company's regulated rate base.

Because Laclede Gas will not be issuing long-term debt for purposes of the transaction, it will not be in violation of this condition.

Financial Condition 7: Laclede Gas Company agrees to maintain its debt and, if outstanding, its preferred stock rating at an investment grade credit rating, unless it is unable to do so due to events or circumstances beyond its control, including, but not limited to, acts of God, war, insurrection, strike, civil unrest, material changes in market conditions that could not have been reasonably anticipated, or changes in the application, character or impact of laws, taxing requirements, regulations, or regulatory practices and standards of governing the Company's regulated operations. Laclede Gas Company agrees to notify the Staff and Public Counsel in the event it becomes aware of any material possibility that it will not be able to maintain such a credit rating with any established agency that typically rates Laclede's debt. In the



event Laclede Gas Company's credit rating should fall below investment grade, Laclede shall file a plan with the Commission within 90 days of such occurrence proposing alternatives for raising its credit rating above investment grade.

Staff's Response: The Companies provided the following response to Staff Data Request No. 11:

- Laclede Gas has kept its commitment to maintain its debt and, if outstanding, its preferred stock rating at an investment grade credit rating, unless it was unable to do so due to certain events or circumstances beyond its control. Currently, Laclede has a credit rating of A- applicable to these instruments.
- Laclede Gas Company is prepared to keep its commitment to notify the Staff and Public Counsel in the event it becomes aware of any material possibility that it will not be able to maintain such a credit rating with any established agency that typically rates Laclede's debt. No such circumstance has arisen in the 15 years since this commitment was made.
- Should its credit rating fall below –investment grade, Laclede Gas Company remains prepared to file a plan with the Commission within 90 days of such an occurrence proposing alternatives for raising its credit rating above investment grade.

Staff verified Laclede Gas' response to Staff Data Request No. 11 and agrees that it has maintained an investment grade credit rating. Based on Staff's review of rating agency feedback regarding Spire's proposed EnergySouth acquisition and Spire's Alagasco acquisition, Laclede Gas Company is expected to maintain its investment grade credit rating. However, Spire's issuance of a significant amount of holding company debt to finance its acquisitions may not allow Laclede Gas Company to be assigned a stronger credit rating if its stand-alone risk profile is stronger than Spire on a consolidated basis.

Financial Condition 8: The Laclede Group, Inc. and Laclede Gas Company agree that the Commission has, and will continue to have, the authority after the Proposed Restructuring to regulate, through the lawful exercise of its current statutory powers, any direct or indirect transfer or disbursement of earnings from Laclede Gas Company to an affiliate that would jeopardize the Company's ability to meet its utility obligations. The Laclede Group, Inc. and Laclede Gas Company also agree that the commission has the authority, through the lawful exercise of its ratemaking powers, to ensure that the rates charged by Laclede Gas Company for regulated utility service are not increased as a result of the unregulated activities of Laclede's affiliates and Laclede agrees, consistent with such standard, that rates should not be increased due to such activities.

Staff's Response: The Companies provided the following response to Staff Data Request No. 11:

- Spire and Laclede Gas Company continue to agree that the Commission has, and will continue to have, the authority after the Proposed Restructuring to regulate, through lawful exercise of its current statutory powers, any direct or indirect transfer or disbursement of earnings from Laclede Gas Company to an affiliate that would jeopardize the Company's ability to meet its utility obligations.
- Spire and Laclede Gas Company continue to agree that the Commission has the authority, through the lawful exercise of its ratemaking powers, to ensure that the rates charged by Laclede Gas Company for regulated utility service are not increased as a result of unregulated activities of Laclede's affiliates and Laclede continues to agree, consistent with such standard, that rates should not be increased due to such activities.

To Staff's knowledge, Laclede Gas Company has two legal avenues to transfer funds to any affiliates or its holding company. It can either distribute dividends to the holding

company or it can make intercompany loans. If Laclede Gas Company's access to capital at a reasonable cost is jeopardized by Spire's holding company leverage, then Staff would expect the Companies to restrict the funds transferred to Spire and other affiliates. Additionally, if Spire's increased financial risk causes higher debt costs to be incurred by Laclede Gas Company, then the Commission can consider this in determining a fair and reasonable capital structure and rate of return to allow for Laclede Gas Company.

Section IV Access to Information Condition 1: The Laclede Group, Inc. and Laclede Gas Company shall provide the Staff and Public Counsel with access upon reasonable written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, to all written information provided to common stock, bond, or bond rating analysts, which directly, or indirectly, pertains to Laclede Gas Company or any affiliate that exercises influence or control over Laclede Gas Company or has affiliate transactions with Laclede Gas Company. Such information includes, but is not limited to, reports provided to, and presentations made to, common stock analysts and bond rating analysts. For purposes of this condition, "written" information includes but is not limited to, any written and printed material, audio and videotapes, computer disks, and electronically stored information. Nothing in this condition shall be deemed to be a waiver of The Laclede Group, Inc.'s or Laclede Gas Company's right to seek protection of the information or to object, for purposes of submitting such information as evidence in any evidentiary proceeding, to the relevancy or use of such information by any party.

Staff's Response: For purposes of this investigation, the Companies' accommodated Staff's requests for confidential information by making much of this information available at Laclede Gas Company's Jefferson City offices for review. However, Staff notes that some information was redacted without an explanation as to why it was redacted. Additionally, Staff is of the opinion that some of the information requested, such as various rating agency presentations and valuation analyses, should be provided directly to Staff and simply designated as "highly confidential." This type of cooperation would facilitate Staff's ability to complete its regulatory duties, especially on expedited investigations with limited resources.

--David Murray, Manager, Financial Analysis Unit.

2. Compliance with Section IV, Access to Information Conditions:

Among the conditions set out in the *Unanimous Stipulation and Agreement* are the following at Section IV, Access to Information Conditions:

1. The Laclede Group, Inc. and Laclede Gas Company shall provide the Staff and Public Counsel with access, upon reasonable written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, to all written information provided to common stock, bond, or bond rating analysts, which directly or indirectly pertains to Laclede Gas Company or any affiliate that exercises influence or control over Laclede Gas Company or has affiliate transactions with Laclede Gas Company. Such information includes, but is not limited to, reports provided to, and presentations made to, common stock analysts and bond rating analysts. For purposes of this condition, "written" information includes but is not limited to, any written and printed material, audio and videotapes, computer disks, and electronically stored information. Nothing in this condition shall be deemed to be a waiver of The Laclede Group, Inc.'s or Laclede Gas Company's right to seek protection of the information or to object, for purposes of submitting such information as evidence in any evidentiary proceeding, to the relevancy or use of such information by any party.

2. Upon request, Laclede Gas Company and The Laclede Group, Inc. agree to make available to Staff, Public Counsel and PACE, upon

written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, all books, records and employees of The Laclede Group, Inc., Laclede Gas Company and its affiliates as may be reasonably required to verify compliance with the CAM and the conditions set forth in this Stipulation and Agreement and, in the case of PACE, to ensure that it continues to have the same degree and kind of access to information relevant to the investigation and processing of grievances and the enforcement of collective bargaining agreements, whether from affiliates or otherwise, as it currently has under Laclede's existing corporate structure . In addition to following standard discovery procedures, Staffs and Public Counsel's access to bargaining unit employees shall also be conditioned on Staff and Public Counsel providing reasonable notice to the employee's Union of their intent to seek such access and the right of such employee to be represented by the Union. Laclede Gas Company and The Laclede Group, Inc. shall also provide Staff and Public Counsel any other such information (including access to employees) relevant to the Commission's ratemaking, financing, safety, quality of service and other regulatory authority over Laclede Gas Company; provided that Laclede Gas Company and any affiliate or subsidiary of The Laclede Group, Inc. shall have the right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that such records and personnel of affiliates or subsidiaries : (a) are not within the possession or control of Laclede Gas Company; or (b).are either not relevant or are not subject to the Commission's jurisdiction and statutory authority by virtue of or as a result of the implementation of the Proposed Restructuring.

3. Laclede Gas Company, each affiliate and The Laclede Group, Inc. will maintain records supporting its affiliated transactions for at least five years.

Spire and its family of corporations have not complied with these conditions. On July 7, 2010, the Staff brought a complaint against Laclede Gas, Case No. GC-2011-0006, for its breach of these conditions by asserting, in the course of an action in circuit court to enforce a discovery order of the Commission arising from two actual cost adjustment ("ACA") cases, GR-2005-0203 and GR-2006-0288, that the information sought by Staff was not in its possession or control.<sup>43</sup> The Commission

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<sup>43</sup> *Staff of the Missouri Public Service Commission v. Laclede Gas Company*, Case No. GC-2011-0006 (*Report and Order*, issued February 4, 2011), pp. 6-7.

granted summary determination for the Staff on its complaint.<sup>44</sup> Laclede appealed and, although Laclede was victorious at the Circuit Court, the Missouri Court of Appeals reversed and affirmed the Commission.<sup>45</sup>

In summary, Laclede violated the *Unanimous Stipulation and Agreement* approved in Case GM-2001-342 and Staff was able to obtain necessary information only with great difficulty, through litigation.

--Kevin A. Thompson, Chief Staff Counsel.

3. Compliance with Section V, Commission Authorization Conditions:

Among the conditions set out in the *Unanimous Stipulation and Agreement* are the following at Section V:

1. The Laclede Group, Inc. agrees that it will not, directly or indirectly, acquire or merge with or allow itself to be acquired by or merged with, a public utility or the affiliate of a public utility, where the affiliate has a controlling interest in a public utility, or seek to become a registered holding company, or take any action which has a material possibility of making it a registered holding company or of subjecting all or a portion of its Missouri intrastate gas distribution operations to FERC jurisdiction, without first requesting and, if considered by the Commission, obtaining prior approval from the Commission and a finding that the transaction is not detrimental to the public, provided that for purposes of acquisitions by the Holding Company only, public utility shall mean a natural gas or electric public utility.

2. Laclede Gas Company shall not sell, lease, assign or transfer to any affiliate or third party any of its utility assets that are used and useful in the performance of Laclede's public utility obligations without obtaining Commission approval.

Spire, formerly The Laclede Group, completed the Alagasco acquisition in 2014 and never sought nor obtained authorization to do so from this Commission.

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<sup>44</sup> *Id.*, p. 14.

<sup>45</sup> *State of Missouri ex rel. Laclede Gas Company v. Public Service Commission of the State of Missouri*, 392 S.W.3d 24 (Mo. App., W.D. 2012).

Spire is currently engaged in acquiring EnergySouth and has not yet sought authorization to do so from this Commission. Its pleadings filed in this case indicate that it does not intend to do so. Staff necessarily concludes that Spire has violated Section V, Clause 1, of the *Unanimous Stipulation and Agreement* and thus the Commission's order of August 14, 2001, in Case No. GM-2001-342.

--Kevin A. Thompson, Chief Staff Counsel.

4. Compliance with Section VI, Cost Allocation Manual Conditions:

Among the conditions set out in the *Unanimous Stipulation and Agreement* are the following at Section VI, Cost Allocation Manual Conditions:

1. Upon implementation of the Proposed Restructuring, transactions involving transfers of goods or services between Laclede Gas Company and one or more of the Company's affiliated entities shall be conducted and accounted for in compliance with the provisions of a Cost Allocation Manual ("CAM") which shall be submitted to Staff, Public Counsel and PACE on or before April 15, 2003, and on an annual basis thereafter. The CAM shall be in the form contained in the direct testimony of Patricia A. Krieger, provided that the CAM, and the information that the Company is required to maintain and submit thereunder, shall be revised and supplemented within 120 days of the approval of this Stipulation and Agreement to include any and all of the following information as required to administer, audit and verify the Transfer Pricing and Costing Methodologies set forth in Section VIII of the CAM or such other Transfer Pricing and Costing Methodologies as may become applicable to the Company in the future:

(a) For all Laclede Gas Company functions that will provide support to nonregulated affiliates and the holding company:

- (1) A list and description of each function;
- (2) The positions and numbers of employees providing each function; and
- (3) The procedures used to measure and assign costs to nonregulated affiliates and the holding company for each function.

(b) A list and description of each service and good that will be provided to Laclede Gas Company from each affiliate and the holding company.

(c) A list and description of each service and good that will be provided by Laclede Gas Company to each affiliate and the holding company.

(d) The dollar amount of each service and good charged to each affiliate and the holding company by Laclede Gas Company, and the total cost related to each service and good listed.

(e) The dollar amount of each service and good purchased from each affiliate and the holding company by Laclede Gas Company, and the total cost related to each service and good listed.

(f) A detailed discussion of the basis for determining the charges from Laclede Gas Company and each affiliate and the holding company, including:

(1) If costs are allocated, a detailed description of the allocation process employed for each service and good;

(2) Detailed descriptions of how direct, indirect and common activities are assigned for each service and good;

(3) A detailed description of how market values are determined for each service and good; and

(A) A detailed discussion of the criteria used to determine whether volume discounts and other pricing considerations are provided to Laclede Gas Company, affiliates, and the holding company.

(g) For each line of business that will be engaged in by Laclede Gas Company with non-affiliated third party customers following formation of a holding company and that would not reasonably be considered as a component of its regulated utility business, Laclede shall provide:

(1) A list and description of each nonregulated activity;

(2) The total amount of revenues and expenses for each nonregulated activity for the last calendar year; and

(3) A listing of all Laclede Gas Company cost centers and/or



functions that directly assign cost, indirectly assign cost and/or allocate cost to each nonregulated activity engaged in by Laclede Gas Company with non-affiliates.

2. Laclede agrees to make compliance with the procedures and requirements set forth in the CAM and the other terms of this Stipulation and Agreement a standard element of its Code of Conduct and to provide employee training and oversight in a manner that is reasonably designed to achieve such compliance. Laclede will conduct regularly scheduled audits to confirm compliance with its CAM and will annually review and update the CAM where necessary and submit such updates with its next CAM filing. Laclede will identify a function or position with responsibility for enforcing and updating the CAM.

3. As part of its CAM submittal, Laclede Gas Company will provide a list of all jurisdictions in which Laclede Gas Company, the holding company, affiliates, and service company, if formed, file affiliate transaction information.

4. As part of its CAM submittal, Laclede Gas Company will also provide Organizational Charts for The Laclede Group, Inc. (corporate structure), Laclede Gas Company and any other affiliate doing business with Laclede Gas Company and a copy of the annual holding company filing the Laclede Group, Inc. is required to file with the Securities and Exchange Commission.

When Laclede Gas filed Case No. GM-2001-342, seeking authority to restructure as a holding company, it filed a proposed Cost Allocation Manual ("CAM") with the Direct Testimony of Patricia A. Krieger. However, at that time, the Commission's Affiliate Transactions Rules were on appeal. Several companies, including Laclede, had challenged the Commission's authority to promulgate the rules. In 2003, two years after the reorganization case was over, the Missouri Supreme Court affirmed the Commission's rules.<sup>46</sup> Since the rules were on appeal at the time Laclede sought to restructure, one of the conditions in the *Unanimous Stipulation and Agreement* required

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<sup>46</sup> *Atmos Energy Corp. v. Public Service Com'n*, 103 S.W.3d 753 (Mo. banc 2003).

that the CAM be in the form contained in the direct testimony of Patricia A. Krieger and that it contain a laundry list of information set out in the *Unanimous Stipulation and Agreement*.

The Krieger CAM contained asymmetrical pricing provisions for affiliate transactions, as do the Commission's rules. However, the CAM that Laclede Gas adopted in 2004 was not in the form contained in the direct testimony of Patricia A. Krieger as required by the *Unanimous Stipulation and Agreement*. It also did not comply with the Commission's Affiliate Transaction Rules.

Staff repeatedly expressed its concerns with the 2004 CAM to Laclede Gas after the Commission's Affiliate Transaction Rules became effective in mid-2003. Staff's expressions of concern were unavailing. Eventually, Staff filed a complaint on October 6, 2010 (Case No. GC-2011-0098), alleging that Laclede's CAM failed to comply with the Commission's Affiliate Transaction Rules; that Laclede failed to obtain Commission approval of its CAM; and that Laclede failed to annually submit its CAM to Staff. Laclede filed a counter-claim to Staff's complaint, alleging that Staff did not have a good faith, non-frivolous argument for its position and was therefore in violation of Commission rule 4 CSR 240-2.080(7).

The case was eventually settled and on July 16, 2013, Staff, Laclede Gas, and OPC jointly filed a *Unanimous Partial Stipulation and Agreement and Waiver Request and Request for Approval of Cost Allocation Manual* in eight cases, including GC-2011-0098, as well as seven other cases concerning Laclede's actual cost adjustments for 2004 through 2011. The *Unanimous Stipulation and Agreement* resolved Staff's complaint by submitting for Commission approval a revised CAM that

was acceptable to Laclede, Staff, and OPC. It included Laclede's agreement to file all current and future versions of its CAM in the Commission's electronic filing system ("EFIS") and to notify Staff and OPC of any such filings via e-mail. In addition, Laclede agreed to continue to file in EFIS its annual CAM report detailing its affiliate transactions for the preceding fiscal year. Upon the Commission's approval of the *Unanimous Stipulation and Agreement*, both Staff's complaint and Laclede's counter-claim in EC-2011-0098 were dismissed with prejudice.

In summary, Laclede violated the *Unanimous Stipulation and Agreement* approved in Case GM-2001-342 and was only brought into compliance through litigation.

--Kevin A. Thompson, Chief Staff Counsel.

5. Compliance with Section VII, Miscellaneous Conditions:

Among the conditions set out in the *Unanimous Stipulation and Agreement* are the following at Section VII, Miscellaneous Conditions:

1. Laclede Gas Company will not seek to recover any costs related to the Proposed Restructuring from ratepayers. These costs will be identified, described and accounted for in a manner that would enable the Staff and Public Counsel to seek disallowance from rates, if necessary, in a future proceeding.

2. Laclede Gas Company will provide the Staff and Public Counsel with an explanation for any final reorganization journal entry that deviates by more than ten percent (10%) from the estimated pro forma entries provided in Exhibit 4 of the Application. Copies of the actual journal entries will be provided to the General Counsel's Office no later than thirty days following the preparation of the final merger closing entries.

3. The Laclede Group and its affiliates (including Laclede) will provide the following documents to Staff and Public Counsel on an annual basis:

(a) All new, revised and updated business plans for The Laclede Group and its affiliates (including Laclede);

(b) Descriptions of any and all joint marketing/promotional campaigns between Laclede and The Laclede Group and any of its affiliates;

(c) Narrative description of all products and services offered by The Laclede Group and its affiliates (including Laclede), provided that Laclede shall not be required to provide narrative descriptions of its tariffed products and services;

(d) All information provided under this subsection shall be considered "highly confidential" or "proprietary" as those terms are used in 4 CSR 240-2 .085, and shall be treated as highly confidential or proprietary information by the Staff and Public Counsel;

(e) The Laclede Group, Inc. and its affiliates (including Laclede) shall also notify Staff, Public Counsel and PACE in the event and at such time as they commence a line of business that neither Laclede nor its affiliates were actively engaged in at the time of the Proposed Restructuring. Such notification can take the form of public announcements, press releases or other means of notification provided to the parties.

4. Laclede Gas agrees to notify the Staff, Public Counsel, and PACE in the event and at such time as any decision is made to transfer any department or function relating to the Company's provision of regulated utility services from the regulated gas corporation to a non-regulated affiliated entity or other third party; provided that nothing herein shall be construed as limiting or modifying in any manner any notice or other requirement Laclede may have relating to the transfer of bargaining unit employees or the work performed by such employees pursuant to the existing collective bargaining unit agreements between Laclede and Pace or applicable federal labor law. At the time of its annual CAM filing, Laclede will also provide Public Counsel, Staff and PACE information detailing the name, job description, and transfer dates of any employees that were permanently or temporarily transferred between Laclede and any affiliate during the preceding fiscal year.

5. Nothing in this Stipulation and Agreement shall be deemed to change in any way any of the rights and obligations of Laclede Gas Company or PACE under the collective bargaining agreements between them or under any non-PSC law, and by entering into this Stipulation and

Agreement, neither Laclede Gas Company or PACE waives any such rights.

6. Nothing in this Stipulation and Agreement or the implementation of the Proposed Restructuring shall affect in any way the scope of any existing ratemaking authority the Commission has over Laclede Gas Company relating to activities undertaken by Laclede Energy Resources or Laclede Pipeline Company prior to implementation of the Proposed Restructuring or over ratemaking issues that may arise as the result of the formation of a service company.

Staff is unaware of any violations of these conditions at this time.

--Kevin A. Thompson, Chief Staff Counsel.

**D. Detriments to the Public Interest:**

The Commission is authorized to approve utility mergers, acquisitions and restructurings upon a determination that the proposed transaction is not detrimental to the public interest.<sup>47</sup>

**1. Affiliate Transaction Detriments**

Spire, previously known as Laclede Group Inc., acquired Alagasco on August 31, 2014, and is processing its acquisition of EnergySouth currently. The Algasco acquisition did have an impact on Missouri ratepayers. The EnergySouth acquisition will likely have an impact on Missouri ratepayers. The Algasco and EnergySouth acquisitions have a detrimental aspect of increasing the amount of holding company costs. Laclede Gas Company's September 30, 2015, Affiliate Transaction Report indicates on page 11 that any costs incurred by Laclede Holdings for general and administrative and general expenses are directly allocated to each of the affiliates, including Laclede Gas Company ("LGC"). The concern that this approach is in violation of the Commission's affiliate transactions is noted but should be noted in another venue.

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<sup>47</sup> Sections 393.190.1 and 393.250, RSMo.

LGC is the only Missouri utility with an approved Cost Allocation Manual ("CAM"). LGC's CAM was approved by the Commission effective August 24, 2013. A CAM is to include the criteria, guidelines and procedures a regulated gas corporation will follow to be in compliance with the Commission's affiliate transaction rule. LGC's operations have not been reviewed and compliance under its approved CAM has not been reviewed since LGC's last rate case, which was July 2013 for its LGC division and May 2014 for its MGE division. A concern regarding compliance with the Commission's affiliate transactions rule has arisen from the Staff review in GR-2014-0324 of Laclede's MGE division's 2013/2014 ACA case. These issues show the importance of review of LGC's planned compliance with the Commission's affiliate transactions rule with the addition of new affiliate companies for LGC to support.

Spire or Laclede Group lacks the ability to operate independently of its affiliates. Laclede Group's Form 10 K (Annual Report) filing with the United States Securities and Exchange Commission for the fiscal year ended September 30, 2015, on page 10 states:

**RISKS AND UNCERTAINTIES THAT RELATE TO THE BUSINESS AND FINANCIAL RESULTS OF LACLEDE GROUP AND ITS SUBSIDIARIES**

**As a holding company, Laclede Group depends on its operating subsidiaries to meet its financial obligations.**

Laclede Group is a holding company with no significant assets other than the stock of its operating subsidiaries and cash investments. Laclede Group, and Laclede Gas prior to Laclede Group's formation, have paid dividends continuously since 1946. Laclede Group's ability to pay dividends to its shareholders is dependent on the ability of its subsidiaries to generate sufficient net income and cash flows to pay upstream dividends and make loans or loan repayments. In addition, because it is a holding company and the substantial portion of its assets are represented by its holdings in the Utilities, the risks faced by the Utilities as described under RISKS THAT RELATE TO THE GAS UTILITY SEGMENT below

may also adversely affect Laclede Group's cash flows, liquidity, financial condition and results of operations.

Since no acquisition approval requests have been filed with the Commission, this case is the first proceeding in which LGC's affiliate activities under its approved CAM have been considered in conjunction with the Alagasco and pending EnergySouth acquisitions. Staff's investigation showed that the holding company planned for LGC to operate its investment in Alagasco. It is assumed that the holding company is planning the same relationship for EnergySouth. The holding company lacks the resources to operate these affiliates. The items discussed in this investigation would have been detected earlier in a rate case or acquisition review.

A review of the Alabama Public Service Commission's order approving the transfer of ownership of 100% of the common stock of Alabama Gas Corporation to Laclede Group, Inc., shows that approval was based on the commitment of LGC being operationally qualified to operate Alagasco. Laclede Group, Inc., has no operational natural gas distribution experience let alone any history to demonstrate its qualifications as a natural gas utility. It is LGC that is operationally qualified in every respect to own and operate Alagasco. It is LGC, not Spire, which "is managerially qualified in all aspects to own, direct, and support Alagasco in the discharge of its obligations to serve the public." It is LGC, not Spire, that has a "seasoned and experienced team of leaders and a highly trained work force dedicated to providing safe, reliable natural gas service that will complement Alagasco's experienced leadership team and trained work force."

Laclede Group had no approval from the MoPSC to commit LGC to operate Alagasco or make commitments on its behalf to the Alabama Public Service Commission. The Alabama Public Service Commission nonetheless approved the

transaction in part based on these non-authorized LGC commitments. Spire operates by utilizing LGC resources. In LGC's most recent Affiliate Transaction Report for the year ending September 30, 2015, Laclede Group or Spire is not listed as an affiliate that is providing any information, assets, goods, or services to LGC. The Report appears to indicate on page 12 that LGC provided the holding company, Laclede Group (now Spire), at least \$31 million of services. This page appears to indicate that the Laclede Group then charged over \$33 million to its affiliates with LGC receiving over \$22 million of these charges. These charges are submitted using an approach inconsistent with the reporting requirements of the Commission's affiliate transaction rules. LGC is required to provide annually the amount of all affiliate transactions, by affiliated entity and account charged.

Prior to August 31, 2014, LGC employees operated Spire and all its affiliates. LGC obtained a waiver to the MoPSC affiliate transaction rule, 4 CSR 240-40.015(2)(A), 1 and 2, to allow it to provide or receive services at cost in transactions with Laclede Energy Resources ("LER") as long as LGC complied with its approved CAM and Standards of Conduct requirements. Laclede's compliance is a matter previously discussed as an outstanding issue in GR-2014-0324.

LGC does not have similar waivers for affiliate transactions with Alagasco or EnergySouth nor has LGC requested such waivers. Without this waiver, the MoPSC affiliate transaction rules would require LGC to provide information, assets, goods, and services to Alagasco and EnergySouth at the greater of full market price or LGC's fully distributed costs. Further, the MoPSC affiliate transaction rules would require LGC to pay for information, assets, goods, and services from Alagasco and EnergySouth at the



lower of full market price or LGC's fully distributed costs to provide the information, assets, goods, and services for itself. These criteria were established so that compliant affiliate transactions would satisfy the rule requirements that companies such as LGC not provide a financial advantage to an affiliate.

MoPSC Rule 4 CSR 240-40.015(2)(D) requires LGC to not participate in any affiliate transaction which is not compliant with the rule. LGC has satisfied none of the requirements in 4 CSR 240-20.015(10) required to obtain a variance of the MoPSC affiliate transaction rules in relation to the exchange of assets, information, goods, and services between itself and its affiliates.

Laclede Group's Form 10 K (Annual Report) filing with the United States Securities and Exchange Commission for the fiscal year ended September 30, 2015, on page 12 and 13 states:

**Recent acquisitions may not achieve their intended results, including anticipated efficiencies and cost savings.** Although the Company and its subsidiaries expect that the recent acquisitions will result in various benefits, including a significant cost savings and other financial and operational benefits, there can be no assurance regarding when or the extent to which the Company and its subsidiaries will be able to realize or retain these benefits. Achieving and retaining the anticipated benefits, including cost savings, is subject to a number of uncertainties, including whether the assets acquired can be operated in the manner the Company and its subsidiaries intended. Events outside of the control of the Company and its 12 subsidiaries, including but not limited to regulatory changes or developments, could also adversely affect their ability to realize the anticipated benefits from the acquisitions. Thus, the integration of Alagasco may be unpredictable, subject to delays or changed circumstances, and the Company and its subsidiaries can give no assurance that the acquisitions will perform in accordance with their expectations or that their expectations with respect to integration or cost savings as a result of the Alagasco acquisition will materialize. In addition, the anticipated costs to the Company and its subsidiaries to achieve the integration of Alagasco may differ significantly from their current estimates. The integration may place an additional burden on management and internal resources, and the diversion of management's

attention during the integration process could have an adverse effect on the Company's and its subsidiaries' business, financial condition and expected operating results.

These acknowledged risks have not been examined as to their impact on LGC.

--Robert Schallenberg, Manager, Operational Analysis Department.

## 2. Billing Detriments

The Commission should be aware of billing issues that have impacted customers since the Commission approved the sale of MGE to LGC on July 17, 2013.<sup>48</sup>

In September 2015, LGC integrated MGE's customer service and billing system with LGC's Customer Care and Billing system ("CCNB"). In doing so, LGC reduced the number of MGE billing cycles from 21 to 18. The reduction of billing cycles caused a significant number of MGE customers to receive a "long" bill covering a billing period in excess of 35 days.<sup>49</sup> Staff filed a complaint, Case No. GC-2016-0149, with the following introduction:

The Complaint concerns the failure to provide affected customers adequate notice of a change in meter reading routes or schedules resulting in a change of a billing cycle of 9 or more days in violation of Commission Rule 4 CSR 240-13.020(6), and/or the proration of certain fixed charges on a customer bills covering billing period in excess of 35 days in violation of Missouri Gas Energy's tariff.

Case No. GC-2016-0149 is currently pending.

In addition, in June 2016, Staff was notified that there had been  
\*\* \_\_\_\_\_ \*\* that potentially could affect \*\* \_\_\_\_\_ \*\* customer accounts.

Although this type of incident may occur in-house, Staff notes that it was an outsource

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<sup>48</sup> Case No. GM-2013-0254.

<sup>49</sup> In violation of MGE's tariff.

call center that was involved in this particular breach.<sup>50</sup> In July 2016,

\*\* \_\_\_\_\_ \*\* received a disconnection notice in error.

Staff is not asserting these types of concerns have or will occur in the Alagasco or EnergySouth transactions, but is informing the Commission of possible detriments that can result from transaction synergies.

--Kim Cox, Utility Policy Analyst II, Tariff/Rate Design Unit, Operational Analysis Dept.

### 3. Ratemaking Treatment of Merger Costs and Savings

Spire has stated in data request responses that it has no plans to seek direct ratemaking recovery of the merger premium incurred in relation to the Alagasco or EnergySouth transactions, nor seek recovery of the transaction costs recorded by Spire as a result of these transactions. However, pertaining to the EnergySouth transaction, Spire stated in its response to Staff Data Request No. 49 the following:

To the extent there are net financial benefits for Missouri ratepayers as a result of Spire's investment in a transaction for which Missouri customers were not asked to contribute, Laclede Gas may propose that such benefits, and the related transition expenses incurred to achieve them, be shared with its customers for some period of time.<sup>51</sup>

Based upon this response, Spire may seek to exclude a portion of the actual net transaction savings experienced by LGC MGE as a result of the EnergySouth and Alagasco transactions from cost of service in future LGC and MGE general rate cases in Missouri.

If Spire seeks this treatment of transaction savings and costs in future rate cases, the effect would be to attempt to state Missouri customer rates higher than what would

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<sup>50</sup> An outsource call center is one that is operated by a contractor.

<sup>51</sup> Spire made an identical statement in regard to the Alagasco transaction in its Response to Staff Data Request No. 62.

be justified as measured by the utilities' actual cost of service at the time of the rate proceedings. In the past, when similar proposals were made by utilities in the context of merger/acquisition applications, Staff opposed them as being inherently detrimental to customers in that the proposals were ultimately intended to provide the companies with a means to indirectly recover a portion of merger premium and transaction costs. When this issue was raised in the context of prior merger/acquisition applications, Staff addressed potential detriments of this nature by recommending that a condition be placed on any action by the Commission to approve the transaction forbidding both direct and indirect recovery of merger costs.<sup>52</sup> However, unless Spire files to seek Commission approval of either or both of the Alagasco and EnergySouth transactions, Staff will by necessity wait to address potential detriments in this area until LGC and MGE file their next general rate proceedings in Missouri.

--Mark Oligschlaeger, Manager, Auditing Department.

#### 4. Service Quality Detriments

##### **Introduction and General Description**

Regulated utilities perform many processes and practices including billing, credit and collections, meter reading, payment remittance, call center operations, service or work order processes and service connection, disconnection and reconnection; all of which affect and help define service quality. Service reliability and outage prevention are also critical components of service quality. It is the Staff's opinion that regulated

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<sup>52</sup> See, for example, the *Stipulation and Agreement* in Case No. EM-2016-0213, filed August 4, 2016, between The Empire District Electric Company/Liberty Utilities (Central) Co. and Staff, Section D.1, in which it states "Empire will not seek either direct or indirect rate recovery or recognition of any acquisition premium through any purported "savings "sharing" adjustment (or similar adjustment) in future rate cases." The same language pertaining to transaction costs can be found in Section D.2 of the *Stipulation and Agreement*.

utilities should perform these activities with effective and efficient internal control to promote acceptable levels of service for their customers. Customers pay for the entire cost of the service they receive, including the staffing, technology, management, training, buildings, infrastructure, vehicles, equipment, and other costs and they are entitled to quality service.

The Commission has specific rules that govern a variety of service quality processes including: service disconnection and reconnection processes, payment plans during cold weather, customer billing and payments, deposits, meter reading including estimated reads, denial of service, customer complaint processes, utility accessibility by its customers, rules regarding registered customers and others.

Service quality performance measurements or metrics are established and used by utilities to determine and monitor the service they are providing to their customers. These measurements are critical in that they serve multiple purposes including demonstrating past and current performance as well as both trends of improvement and decline. Such metrics are used in resource analysis, such as staffing and equipment needs, and provide some assurance to utilities, utility customers, shareholders and utility commissions that a certain level of customer service is being provided.

Some aspects of service quality, however, do not lend themselves to specific metrics or indicators. Examples include the consistent application of credit and collection practices, detection of billing errors, the effective training of customer service representatives to ensure the relaying of accurate and consistent information as well as courteous treatment of customers by company employees performing service calls.

## Why Is Service Quality at Risk During Utility Merger or Sale Transactions?

There are a number of factors that place regulated utility service quality at risk during merger or sale cases. Transitions may place additional pressure on the utilities being combined due to the merging of different processes, practices, systems, procedures, cultures, organizational structures, and workforces. Transitions may require that previous focus be shared with determining how to combine two separate systems into one, often with additional pressures of expected efficiencies or synergies and cost savings. New or different ways of operating, while determined to be desirable, may disrupt or disturb stability, security of systems, operations, or staffs. In addition, natural human resistance to change should not be discounted. "When uncertainty or ambiguity about the future accompanies change, individuals and even groups will take action based on their perception of how the change will affect them."<sup>53</sup>

Among the greatest factors that place regulated utility service quality at risk during merger or sale cases are the financial constraint concerns and the desire or need to reduce costs. Mergers and sales can result in strong incentives to reduce costs in order to realize savings driven by the need to compensate for high acquisition premiums and the assumption of new debt to fulfill synergy commitments and expectations and others commitments. Such cost-cutting incentives may cause the deferral of system maintenance and facility upgrades and may also result in the termination of well-trained and experienced workforces whose development, training and expertise has been paid for by ratepayers. Cost reductions may also result in the outsourcing of functions previously performed in-house, that if not managed and controlled effectively can result

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<sup>53</sup> John J. Hampton (ed.), *AMA Management Handbook*, pp. 9-70 (1994).

in reductions in service.<sup>54</sup> Cost-cutting can further result in the deferral of filling positions created by normal attrition. Ensuring that mergers are not detrimental to the public interest should include consideration and evaluation of such factors.

Cost-reductions that have negatively impacted service quality have occurred and been documented at more than one Missouri utility. Such documentation can be reviewed in the context of Case Nos. GR-98-140 (a MGE rate case), GO-95-177 (which resulted in 37 recommendations to MGE for service quality improvements after its purchase by Southern Union Company led to significant cost and ultimately service quality reductions) and cases GC-97-33 and GC-97-497, Staff and OPC complaints filed against MGE, respectively.

In Case No. ER-2004-0034 (an Aquila, Inc., rate case), Staff addressed declining call center performance at Aquila, Inc., which occurred after Aquila's decision to use temporary workers to staff its Raytown call center. In part, Aquila indicated it had utilized temporary staffing as a means to reduce costs. Aquila subsequently returned to recruiting, selecting and hiring its own call center and staffing at higher levels.

While the merger or sale experience of one Missouri utility does not necessarily predict a similar experience for future mergers, it is important to recognize the stress that mergers and acquisitions can place on regulated utility operations.

**What Analysis did Staff Conduct in the context of the Present Investigatory Docket Regarding Risks to Missouri Customer Service Quality in the Spire Acquisition of EnergySouth?**

Because Spire and EnergySouth did not file an acquisition application in Missouri, there are commitments to Missouri customers to review and inquire upon.

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<sup>54</sup> \*\* This occurred nearly immediately to the MGE call center after the acquisition of MGE by Laclede which closed September 1, 2013. \*\*

There also is no Spire management testimony filed in Missouri to review regarding the service quality safeguards Spire will employ to ensure the acquisition will not be detrimental to the Missouri public interest. Spire has indicated that it plans to integrate EnergySouth with Alagasco and that there are no “current plans to integrate EnergySouth’s customer facing functions and services with those of Laclede and MGE . . . .”<sup>55</sup>

Staff has sent a number of data requests to Spire and some to Sempra/EnergySouth to inquire about actions and analysis performed to date to determine that there will be no detrimental impact upon Laclede Gas Company and MGE customers as a result of Spire’s acquisition of EnergySouth. As with virtually any merger or acquisition, the present acquisition contains potential service quality detriments to Missouri customers should the desire to reduce costs (for example because of acquisition premiums or other cost-reduction drivers) result in negative impacts to specific areas or processes. Those specific service quality areas or processes include, but are not limited to: call center operations, service order processes, meter reading, credit and collections, service connection and disconnection processes, payment remittance and others. Staff inquired about planned operational changes during and post-acquisition of EnergySouth in any and all service quality areas that include outsourcing and/or terminating current Laclede Gas Company and MGE employee headcounts<sup>56</sup> (Schedule 13). The Company indicated the following:

Response: Since there are no plans to integrate these EnergySouth functions with those of Laclede Gas Company (Laclede) and Missouri Gas Energy (MGE), the purchase is not anticipated to have any impact on

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<sup>55</sup> Case No. GM-2016-0342, Response to Data Request No. 30.

<sup>56</sup> Data Request No. 28 in Case No. GM-2016-0342.



these functional areas or the quality of service provided by Laclede and MGE. The only possible exception would be if the transaction results in the identification of best practices that, if adopted might enhance service quality.

While the Company indicates it has no plans to integrate EnergySouth functions with Laclede and MGE, financial pressure on Spire due to the acquisition of additional companies could potentially result in further cost cutting and service quality declines to Spire's Missouri operations.

**What Information does the Staff Possess Regarding the Service Quality of Spire's Operating Subsidiaries Missouri operations?**

The Staff has considerable information about the service quality of Spire's Missouri operating subsidiaries, MGE and LGC, that it has obtained through a variety of means over many years. Staff has obtained service quality information through: formal case work including rate, merger, investigation, and complaint cases. Staff receives service quality reporting from both companies that encompasses the companies' call center performance (including their use of call deferral technology and staffing), meter reading including estimated reads, pay station locations, and other issues.

Staff also has access to customer complaint and comment data as well as operational information it obtains through regularly scheduled conference calls and occasional in-person meetings with representatives of both LGC and MGE. Such conference calls and meetings were agreed to in the *Stipulation and Agreement* that was filed in Case No. GM-2013-0254, the MGE acquisition case. The Commission approved the *Stipulation and Agreement* and it became effective on July 31, 2013. The sale, transfer and assignment of certain Southern Union assets to LGC closed on September 1, 2013.

## **Present MGE and LGC Call Center Performance Concerns**

At this time, Spire indicates it does not have plans of combining call center operations as noted in its response to Data Request No. 41:

Currently, Alagasco has its own call center and its call center operations are separate from those of Laclede Gas and MGE. It is anticipated that EnergySouth's call center functions, which are currently performed independently of both Alagasco, Laclede and MGE's call center operations, will eventually be integrated with those of Alagasco.

However, Staff has had concerns with various aspects of the call centers of both MGE and Laclede since the sale of the MGE properties to LGC. As utilities have closed or consolidated local business offices that in the past accommodated walk-in-traffic and provided customers with a utility presence in their communities, the role of the call center has become increasingly critical as the primary point of contact for customers.

It is Staff's opinion that when Missouri regulated customers call their regulated utility they should be able to speak to a well-trained customer service representative in a reasonably expeditious manner and their requests, concerns and inquiries should be handled accurately, efficiently and with attention to good customer service. Call deferral technologies enable the call center to inform the customer that the hold times are excessive and as an alternative to being unable to speak to a representative in a reasonable amount of time, the customer may receive a return call later from the call center. A later returned phone call may be requested as either "next in queue" or the customer may request a return call at a later more specific time, assuming the call center can accommodate the time request. Some utilities consider this call deferral technology to be a "call peaking" tool which permits the call center to better manage heavy call volume periods. Staff agrees with such limited utilization of this technology.

In Staff's opinion, call deferral technologies can be a particularly useful management tool as a "call volume peaking device" (for example to be utilized on Monday morning when call volumes are expected to be at their highest during a given week). However, such technology should be used minimally and is not a sufficient substitute for a readily accessible, well-trained utility call center workforce nor should it be used as a means to defer hiring needed staff.

A Missouri regulated utility call center is very different than other types of call centers that handle non-essential, non-life-supporting utility services such as home shopping sales, concert and airline ticket sales, and other such items. Customers with critical utility needs, such as those with a pending service disconnection notice, those who need to make payment arrangements, those who need to schedule service turn-on orders, and similar pressing utility service concerns require the ability to speak to an expert utility call center representative quickly. Such well-trained representatives are depended upon to (1) know utility company policies and procedures, (2) know the Company's Customer Information System, (3) know the regulated Company's tariffs and how to efficiently research such tariffs, (4) know Missouri Public Service Commission rules and how to efficiently research such rules, and (5) know when to escalate a call to a supervisor for greater expertise. It is because of such critical "call quality" issues, in part, why all of the large Missouri-regulated utilities record 100% of their calls coming into their call centers and retain or archive those calls for extended periods of time, some in excess of twelve months.

Since the acquisition of MGE by LGC, there has been a complete  
\*\* \_\_\_\_\_ \*\* of MGE's call center and a partial \*\* \_\_\_\_\_ \*\* of LGC's

call center. The impact this \*\* \_\_\_\_\_ \*\* has had upon Spire's regulated Missouri customers is a concern for Staff. Call center turnover in a regulated utility environment can have numerous negative consequences in the handling of customer concerns, inquiries, the handling and processing of service orders, including requests for new service, payment arrangements, and other matters. Concerns regarding the \*\* \_\_\_\_\_ \*\* of MGE's call center were documented by Staff in MGE's 2014 rate case, Case Number GR-2014-0007, including the potential negative impact high turnover, associated with \*\* \_\_\_\_\_ \*\* call centers, may have on utility operations.<sup>57</sup> The experience of Aquila, Inc., during the period of financial constraints on the regulated company, provides an example of deficiencies resulting from high call center turnover directly related to the \*\* \_\_\_\_\_ \*\* of its call center operations. Aquila used five outsourced call center agencies within a four year time period in an effort to mitigate such high turnover and ultimately returned to in-house staffing.

The metric information the Staff receives from the companies has indicated performance that the Staff often considers to be in an unacceptable range for those specific service indicators. The conference calls and meetings with LGC and MGE mentioned previously have been targeted, in part, toward improving those metrics, including at various times: Abandoned Call Rates, Average Speed of Answer and the percentage of calls being offered call deferral technologies.

Schedule 1 is an August 15, 2016, letter from Spire's Senior Vice President, General Counsel and Chief Compliance Officer, Mark C. Darrell, to Jeffrey Keevil of the Missouri Public Service Commission Staff. Page 2 of the letter includes a section

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<sup>57</sup> Case No. GR-2014-0007, Lisa Kremer Surrebuttal Testimony, pp. 9 – 22.

entitled "Impact on Customer Service Functions" which indicates toward the middle of the paragraph that:

"On a broader level, the customer service metrics maintained for Laclede Gas and MGE show that performance has improved significantly over a broad array of functional areas during the past three years as these acquisitions were being pursued and completed. These include, among others, improvements in call center metrics, average leak response times, and service response times. In fact the only temporary decline in call center metrics was related to the conversion of MGE to Laclede Gas Company's Customer Care and Billing information system, which was completely unrelated to the Alagasco acquisition. . ."

Staff does not agree with the statement made in Mr. Darrell's letter that MGE call center performance has improved since its acquisition by LGC and, instead, it is Staff's opinion that the MGE call center has experienced significant declines. Staff bases its assessment on call center metrics as well as the impacts of the complete \*\* \_\_\_\_\_ \*\* of MGE's call center, which has exposed regulated MGE Missouri customers to an approximate \*\* \_\_\_\_\_ \*\* turnover rate of the outsourced call center representatives.<sup>58</sup> The Staff requested the turnover rate in writing from Spire in Data Request Number 38 but the Company did not provide a response to that specific request for information.

Laclede representatives have informed Staff that in response to the high turnover rate, it has been moving locations of its \*\* \_\_\_\_\_ \*\* call center representatives from the original \*\* \_\_\_\_\_ \*\*. The first \*\* \_\_\_\_\_ \*\* entity used by Laclede Gas for the MGE properties was an entity called \*\* \_\_\_\_\_ \*\* which was subsequently bought by \*\* \_\_\_\_\_ \*\*. The Company has since added \*\* \_\_\_\_\_ \*\* representatives in \_\_\_\_\_

<sup>58</sup> \*\* Turnover rates estimated by the Company of 15% per month of the Alorica Call Center Representatives on the June 21, 2016, conference call calculating to an estimated 180% per year.\*\*

\*\* \_\_\_\_\_ \*\* and in \*\* \_\_\_\_\_ \*\* to mitigate and address problematic high turnover. It is Staff's understanding that these later \*\* \_\_\_\_\_ \*\* were chosen specifically as \*\* \_\_\_\_\_ \*\* where turnover may be less likely. Total \*\* \_\_\_\_\_ \*\* call center representatives including those handling customer credit and collection matters are presented in Highly Confidential Schedule 2. Such high \*\* \_\_\_\_\_ \*\* brings into question the Company's present ability to staff its call centers with qualified personnel to meet the requirements of 4 CSR 240-13 (2)(A) which states:

At all times during normal business hours qualified personnel shall be available and prepared to receive and respond to all customer inquiries, service requests, safety concerns and complaints.

Highly Confidential Schedules 3 through 9 demonstrate that nearly immediately upon purchase by LGC in calendar year 2014, MGE had record high percentages of calls being offered \*\* \_\_\_\_\_ \*\* as demonstrated by Highly Confidential Schedule 6. Such call \*\* \_\_\_\_\_ \*\* artificially lower (or artificially improve the appearance of) ACR and ASA performance metrics because the customers who agree to a return call are not actually placed in "queue" and their call is not counted as abandoned, even though a longer hold time might normally cause a caller to terminate or abandon such call. Average speed of answer is also shortened (improved) as call deferral technology does not count what the wait time would have been had the caller remained on hold, but is counted instead when the return call is placed to the customer. This is typically a much shorter time, usually a matter of seconds, because the system waits to dial the customer until the call center has an available representative.

Highly Confidential Schedules 3 through 9 demonstrate that both LGC's and MGE's call center performance have declined compared to 2012, the last complete year prior to MGE's acquisition by LGC. The subsequent years have been marked by \*\* \_\_\_\_\_ \*\* levels and higher percentages of calls being offered call \*\* \_\_\_\_\_ \*\* (with the exception of a few months for both companies in 2015). Call deferral technology is a lesser offering of service as the call center is indicating it is too busy to respond to customer calls and instead is deferring those calls to a later time. Highly Confidential Schedules 4, 5, 7 and 8 include ACR and ASA company goals for both MGE and Laclede at the time of the purchase of MGE by LGC. It is the Staff's understanding that neither MGE nor Laclede have established internal goals or "not-to-exceed thresholds" for utilization of their call deferral technologies.

Staff is aware of a number of other large regulated utilities that either (1) determined not to employ such call \*\* \_\_\_\_\_ \*\* or have (2) established internal thresholds of \*\* \_\_\_\_ \*\* or lower for its usage. LGC's and MGE's use of such call \*\* \_\_\_\_\_ \*\* far exceeds such thresholds. While ACR and ASA may appear in the "realm of reason," failing to consider those primary call center metrics in light of the high percentage of calls being offered call \*\* \_\_\_\_\_ \*\* is misleading and does not provide a full and complete assessment of regulated utility call center performance as measured by metrics.

In addition, Staff is the process of investigating a customer information \*\* \_\_\_\_\_ \*\* at the \*\* \_\_\_\_\_ \*\* call center which resulted in the identification of nearly \*\* \_\_\_\_ \*\* Missouri customers being potentially at

\*\* \_\_\_\_\_ \*\* Staff is currently in the process of reviewing Company information provided in response to Staff requests.

Highly Confidential Schedules 10 and 11 demonstrate the call center \*\* \_\_\_\_\_ \*\* headcount customer service representatives totals for LGC and MGE, \*\* \_ \*\* and \*\* \_ \*\* respectively. Schedule 12 represents 136 MGE PSC complaints that included some element of deficiency, poor service, or process failure with the \*\* \_\_\_\_\_ \*\* call center.

Staff continues to work informally with utilities who have either outsourced functions that Staff believes resulted in a service quality detriment or who had discontinued the use of outsourced functions once they were included in customer rates, resulting in cost-cutting that negatively impacted call center performance.

While Staff is not asserting the Alagasco and EnergySouth transactions as currently proposed will create a service quality detriment to Missouri ratepayers, Staff is committed, at this time, to continuing its dialogue with Spire in the form of meetings and conference calls in an effort to alleviate any future or potential concerns.

*--Lisa Kremer, Manager, Consumer & Management Analysis Unit.*

## 5. Financial Detriments

### Intent of Conditions from Case No. GM-2001-342:

It is important for the Commission to understand Staff's objective for the conditions that were imposed in Case No. GM-2001-342. Staff understood that the creation of Laclede Group was probably for the purposes of pursuing other business investments that may impact Laclede Gas' costs, including but not limited to its cost of



capital, whether directly or indirectly. The conditions proposed by Staff and approved by the Commission were intended by Staff to produce a stand-alone S&P credit rating for Laclede Gas that was a function of Laclede Gas' business and financial risks. If this had occurred, this would have alleviated Staff's concern about the potential of Laclede Group's other business and financial risks potentially causing an increased cost of capital to Laclede Gas. However, S&P never recognized these conditions as being significant enough to allow for a consideration of Laclede Gas' stand-alone risk for purposes of assigning Laclede Gas a rating. S&P has consistently stated the following in its ratings assessment of Laclede Gas: "Because there are no meaningful insulation measures in place that protect Laclede Gas from its parent, the issuer credit rating on the company is 'A-', in line with the group credit profile of Laclede of 'a-.'" This is significant due to the fact that S&P believes Laclede Gas has a stand-alone risk profile consistent with an 'A' credit rating, but nonetheless assigns it an 'A-' credit rating due to its affiliation with Spire.

Consequently, even though Laclede Gas' credit rating has not been downgraded due to Spire's acquisition of Alagasco, it has not been allowed to improve to its stand-alone risk profile of 'A' due to its affiliation with Spire. However, S&P affirmed Spire's 'A-' rating, and consequently Laclede Gas' 'A-' rating, when it announced its planned acquisition of EnergySouth.

The suppression of Laclede Gas' credit rating is due to the significant amount of debt Spire issued to complete its acquisition of Alagasco. Spire issued approximately \$625 million of debt to help fund the \$1.35 billion purchase of Alagasco. This contrasts with the structure of the MGE acquisition in which Laclede Gas directly acquired the

MGE assets and issued \$450 million of debt at the Laclede Gas level rather than at the holding company level. While Moody's does assign stronger credit ratings to Spire's regulated utility subsidiaries, A3 for Laclede and A2 for Alagasco, it also expresses concern about the amount of holding company leverage Spire has due to the debt it issues to complete its transactions. After the acquisition of Alagasco, Spire's holding company debt accounted for close to 40% of total consolidated leverage. After Spire's issuance of debt to complete the proposed acquisition of EnergySouth, the amount of holding company debt is expected to exceed 40%. Although Moody's discusses its concern about Spire's holding company leverage, it currently has Spire's Baa2 unsecured rating on a "stable" outlook.

#### Potential Impact on Ratemaking Capital Structures and Cost of Capital

In past rate cases, LGC had recommended the use of Laclede Group's consolidated capital structure for ratemaking purposes. Staff had done so as well due to the fact that S&P assigned Laclede Gas a credit rating based on Laclede Group's consolidated capital structure and consolidated business risk. Staff considered this appropriate because it matched the cost of the capital with the risk underlying the capital structure.

Based on Laclede Gas' responses to Staff's data requests in this investigation, it appears that Laclede Gas will no longer be recommending the use of a holding company consolidated capital structure for purposes of setting Laclede Gas' allowed ROR. Laclede Gas maintains that this approach will allow it to be insulated from the holding company's acquisition activities and the financing associated with these activities. Staff will not debate this issue in this report because this can be addressed in

the context of a rate case, but Staff notes that, to the extent debt investors in Laclede Gas require a higher debt return because of its affiliation with Spire, Laclede Gas' ratepayers will not only pay higher rates to fund Laclede Gas' more equity-rich capital structure, but they will also pay higher debt costs than are justified by its lower risk capital structure.

### Summary

Absent ring-fencing measures that S&P considers adequate to allow Laclede Gas to be assigned a rating consistent with its stand-alone risk profile of 'A', which in Staff's opinion can only be accomplished if the company collaborates with S&P through its own initiatives, Staff cannot provide the Commission assurance that Laclede Gas Company ratepayers will not pay higher capital costs due to Spire's increased financial risk associated with its acquisitions. Staff's experience from monitoring the activities of companies, such as Ameren Corporation's abandonment of its non-regulated generation subsidiary, is that the holding company will protect itself and its affiliates from a financially-troubled subsidiary, but rarely vice versa. Experience from Staff's efforts in Case No. GM-2001-342 has proven that proposing a list of untested conditions has not allowed for stand-alone ratings for Laclede Gas. Therefore, Staff recommends the Companies pursue such efforts and provide evidence that such efforts have been accepted by S&P as being sufficient to allow for Laclede Gas Company to be assigned a rating consistent with its stand-alone risk profiles.

### Disclaimer

Staff has not been able to address all aspects of capital attraction and capital costs for this report. For example, Staff has not explored the details of Spire,

Alagasco and Laclede Gas' credit facilities. It is Staff's understanding that Spire may consider consolidating its credit facilities for all of its subsidiaries, but Staff does not know how this will impact costs at Laclede Gas.

--David Murray, Manager, Financial Analysis Unit.

**D. Questions Raised by OPC:**

OPC raised a specific set of questions in its *Motion to Open Investigation*. The Commission, in granting that motion, did not expressly direct Staff to answer OPC's questions. Nonetheless, Staff will do so here.

**Whether the terms of the unanimous stipulation and agreement required Spire formerly named The Laclede Group) to seek Commission approval prior to the 2014 acquisition of Alagasco or the announced acquisition of EnergySouth;**

Yes; see the "Commission Authorization Conditions," No. 1, set out at page 10, above, from the *Unanimous Stipulation and Agreement* executed by Spire and approved by the Commission in Case No. GM-2001-342. It states, "The Laclede Group, Inc. agrees that it will not, directly or indirectly, acquire or merge with or allow itself to be acquired by or merged with, a public utility or the affiliate of a public utility, where the affiliate has a controlling interest in a public utility . . . without first requesting and, if considered by the Commission, obtaining prior approval from the Commission and a finding that the transaction is not detrimental to the public, provided that for purposes of acquisitions by the Holding Company only, public utility shall mean a natural gas or electric public utility." Alagasco is a natural gas public utility and EnergySouth owns two natural gas public utilities. The acquisitions by Spire unmistakably are within the

scope of the condition and Spire has not sought prior approval from the Commission for either of them.

**Whether Spire sought Commission approval prior to the 2014 acquisition of Alagasco;**

No.

**Whether Spire will seek Commission approval prior to the acquisition of EnergySouth;**

It has not done so yet and its pleadings in this case indicate that it does not intend to do so.

**Whether the acquisition of Alagasco was detrimental to the public or otherwise impacted Missouri customers;**

Yes, it has depressed the credit rating of Laclede Gas and thus increased its cost of capital which is reflected in higher rates. Additionally, Staff is of the opinion that acquisition and integration costs have improperly been allocated to Laclede Gas. Staff is also of the opinion that improper affiliate transactions are occurring on an ongoing basis between Laclede Gas and Spire and Alagasco.

**Whether the acquisition of EnergySouth will be detrimental to the public or otherwise impact Missouri customers;**

Yes, for all the reasons stated in response to the previous question.

**Whether the acquisition of EnergySouth will impact the Commission's access to information;**

At this time, Staff has no indication the acquisition will impact the Commission's access to information. The access to information provisions of the

*Unanimous Stipulation and Agreement* have been upheld by the Missouri Court of Appeals.<sup>59</sup>

**Whether the acquisition of EnergySouth will impact the credit rating or financial stability of Spire as it relates to the cost of capital;**

At this time, Staff has no information to indicate the acquisition will impact the credit rate or financial stability of Spire as it related to the cost of capital. The value of the transaction is \$344 million; Spire's market capitalization is \$3.006 billion.

**Whether the acquisition of EnergySouth will impact the cost allocations among the affiliated companies, and;**

Perhaps, depending on how Spire organizes its group of subsidiaries in the future. In particular, Staff views affiliate transactions as likely.

**Whether the acquisition of EnergySouth will impact the reporting requirements contained in the stipulation and agreement in GM-2001-342.**

At this time, Staff has no indication the acquisition will impact the reporting requirements in the *Unanimous Stipulation and Agreement*.

### **III. MEMORANDUM OF LAW**

Are the transactions in question subject to the Commission's jurisdiction?

#### ***A. What is Jurisdiction?***

Jurisdiction is the authority of a court or administrative tribunal to hear and determine a particular case.<sup>60</sup> In general, courts have broad jurisdiction under the

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<sup>59</sup> *State ex rel. Laclede Gas Co. v. Pub. Serv. Comm'n of State*, 392 S.W.3d 24, 34 (Mo. App., W.D. 2012).

<sup>60</sup> J. Devine, *Missouri Civil Pleading and Practice*, § 9-1 (The Harrison Co., 1986).

Missouri Constitution to hear and resolve any controversies brought to them.<sup>61</sup> Administrative agencies, by contrast, have only limited jurisdiction to resolve matters within the scope of the specific authority conferred on them by statute.<sup>62</sup> In Missouri, the issue of jurisdiction is considered to include the tribunal's authority to grant the requested relief.<sup>63</sup> Therefore, an administrative agency may lack jurisdiction because it is powerless to grant the requested relief although the subject matter of the dispute is within its delegated authority.

**B. *The Jurisdiction of the Public Service Commission:***

The PSC is an executive branch administrative agency of the State of Missouri.<sup>64</sup> Like all administrative agencies, this Commission "is purely a creature of statute" and its "powers are limited to those conferred by the [Missouri] statutes, either expressly, or by clear implication as necessary to carry out the powers specifically granted."<sup>65</sup> While the Commission properly exercises "quasi-judicial powers" that are "incidental and necessary to the proper discharge" of its administrative functions, its adjudicative authority is limited.<sup>66</sup> "Agency adjudicative power extends only to the ascertainment of

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<sup>61</sup> Mo. Const., Art. V, § 14(a): "The circuit courts shall have original jurisdiction over all cases and matters, civil and criminal."

<sup>62</sup> *Bd. of Educ. of City of St. Louis v. State*, 47 S.W.3d 366, 370 (Mo. banc 2001): "Administrative agencies possess only those powers conferred or necessarily implied by statute. The scope of power and duties for public agencies is narrowly limited to those essential to accomplish the principal purpose for which the agency was created."

<sup>63</sup> *Id.*

<sup>64</sup> Mo. Const., Art. IV, § 12: "Unless discontinued all present or future boards, bureaus, commissions and other agencies of the state exercising administrative or executive authority shall be assigned by law or by the governor as provided by law to the office of administration or to one of the fifteen administrative departments to which their respective powers and duties are germane."

<sup>65</sup> *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 47 (Mo. banc 1979) ("*UCCM*"); *State ex rel. City of West Plains v. Public Service Commission*, 310 S.W.2d 925, 928 (Mo. banc 1958).

<sup>66</sup> *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69, 75 (Mo. 1982), quoting *Liechty v. Kansas City Bridge Co.*, 162 S.W.2d 275, 279 (Mo. 1942).

facts and the application of existing law thereto in order to resolve issues within the given area of agency expertise."<sup>67</sup> The PSC is charged by statute with the implementation and enforcement of the Public Service Commission Law, particularly chapters 386 and 393, relating to public utilities that provide electric, gas, sewer, steam, and water services to the public.<sup>68</sup>

Over the years, the courts have compiled a catalog of the things the Commission may not do: it may not award money damages<sup>69</sup> or grant refunds;<sup>70</sup> it may not construe or enforce contracts;<sup>71</sup> it may not declare or enforce any principle of law or equity;<sup>72</sup> it may not manage a public utility<sup>73</sup> or compel it to exercise any property right;<sup>74</sup> it may not limit the liability of a public utility for negligence resulting in damage to persons or

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<sup>67</sup> *State Tax Commission, supra.*

<sup>68</sup> Chapter 386, RSMo, creates the PSC and describes its organization, general powers and the procedures to be used by the PSC. Other statutory chapters grant additional powers to the Commission and define its responsibilities with respect to specific industries: telecommunications, Chapter 392, RSMo; gas, electric, water, steam heating, and sewer companies, Chapter 393, RSMo; rural electric cooperatives, Chapter 394, RSMo; and manufactured housing, Chapter 700, RSMo. Chapters 387 through 391, RSMo, also part of the Public Service Commission Law, relate to transportation. Until July 1, 1985, the Commission's jurisdiction included regulation of railroads and motor carriers (i.e., trucks). However, as a consequence of the national deregulation of the transportation industry, the Missouri General Assembly that year transferred the Commission's powers regarding transportation to the newly-created Division of Transportation, later the Division of Motor Carrier and Railroad Safety, of the Missouri Department of Economic Development. In 2002, the Division of Motor Carrier and Railroad Safety was abolished and its residual duties were transferred to the Missouri Department of Highways and Transportation. Thus, the State Highways and Transportation Commission now exercises what little remains of the authority over railroads and motor carriers once vested in the PSC.

<sup>69</sup> *American Petroleum Exchange v. Public Service Commission*, 172 S.W.2d 952, 955 (Mo. 1943).

<sup>70</sup> *State ex rel. Laundry, Inc. v. Pub. Serv. Comm'n*, 327 Mo. 93, 112, 34 S.W.2d 37, 46 (1931); *State ex rel. City of Joplin v. Pub. Serv. Comm'n of State of Mo.*, 186 S.W.3d 290, 299 (Mo. App., W.D. 2005).

<sup>71</sup> *Kansas City Power & Light Co. v. Midland Realty Co.*, 338 Mo. 1141, 1149, 93 S.W.2d 954, 959 (1936).

<sup>72</sup> *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 47 (Mo. banc 1979).

<sup>73</sup> *State of Missouri ex rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm'n of Missouri*, 262 U.S. 276, 289, 43 S.Ct. 544, 547, 67 L.Ed. 981, \_\_\_ (1923).

<sup>74</sup> *State ex rel. Kansas City v. Public Service Commission of Missouri*, 301 Mo. 179, 192, 257 S.W. 462, 463 (Mo. banc 1923).



property.<sup>75</sup> The principal duties of the Commission are to set just and reasonable rates for utility services rendered<sup>76</sup> and generally to supervise the activities of the state's monopolistic public utilities;<sup>77</sup> but even within this area its authority is constrained. The Commission may not revoke a Certificate of Public Convenience and Necessity ("CCN") that it has granted.<sup>78</sup> The Commission cannot act as a receiver, however desirable that may be in any particular case.<sup>79</sup> However, the Missouri Supreme Court has held that the Commission has "plenary power to coerce a public utility corporation into a safe and adequate service."<sup>80</sup>

The Commission's authority is best understood in the light of its purpose. In 1925, the Missouri Supreme Court stated as follows with respect to the Commission's duty and authority to set just and reasonable rates:<sup>81</sup>

The enactment of the Public Service Act marked a new era in the history of public utilities. Its purpose is to require the general public not only to pay rates which will keep public utility plants in proper repair for effective public service, but further to insure to the investors a reasonable return upon funds invested. The police power of the state demands as

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<sup>75</sup> *Public Service Comm'n of State v. Missouri Gas Energy*, 388 S.W.3d 221, 230-231 (Mo. App., W.D. 2012).

<sup>76</sup> *State ex rel. City of Harrisonville v. Pub. Serv. Comm'n of Missouri*, 291 Mo. 432, 236 S.W. 852 (1922); *City of Fulton v. Pub. Serv. Comm'n*, 275 Mo. 67, 204 S.W. 386 (1918), *error dis'd*, 251 U.S. 546, 40 S.Ct. 342, 64 L.Ed. 408; *City of St. Louis v. Pub. Serv. Comm'n of Missouri*, 276 Mo. 509, 207 S.W. 799 (1919); *Kansas City v. Pub. Serv. Comm'n of Missouri*, 276 Mo. 539, 210 S.W. 381 (1919), *error dis'd*, 250 U.S. 652, 40 S.Ct. 54, 63 L.Ed. 1190; *Lightfoot v. City of Springfield*, 361 Mo. 659, 236 S.W.2d 348 (1951): "The Commission is vested with the state's police power to set "just and reasonable" rates for public utility services, subject to judicial review of the question of reasonableness."

<sup>77</sup> Section 386.250, RSMo.

<sup>78</sup> *State ex rel. City of Sikeston v. Pub. Serv. Comm'n of Missouri*, 336 Mo. 985, 997-98, 82 S.W.2d 105, 109-10 (1935).

<sup>79</sup> *State ex rel. Public Service Commission v. Bonacker*, 906 S.W.2d 896, 900 (Mo. App., S.D. 1995).

<sup>80</sup> *State ex rel. Missouri Southern R. Co. v. Public Service Commission*, 259 Mo. 704, \_\_\_, 168 S.W. 1156, 1163 (banc 1914).

<sup>81</sup> *State ex rel. Washington University et al. v. Public Service Commission et al.*, 308 Mo. 328, 344-45, 272 S.W. 971, 973 (*en banc*).

much. We can never have efficient service, unless there is a reasonable guaranty of fair returns for capital invested. \* \* \* These instrumentalities are a part of the very life blood of the state, and of its people, and a fair administration of the act is mandatory. When we say "fair," we mean fair to the public, and fair to the investors.

Another purpose of the Public Service Commission Law is to ensure that all consumers are treated fairly: "[t]he purpose of providing public utility regulation was to secure equality in service and in rates for all who needed or desired these services and who were similarly situated."<sup>82</sup> Still another purpose is to restrain competition between utilities, which is considered to be undesirable due to the large, duplicative costs involved: "Let it be conceded that the act establishing the Public Service Commission, defining its powers and prescribing its duties, is indicative of a policy designed, in every proper case, to substitute regulated monopoly for destructive competition."<sup>83</sup> However, the primary purpose of the Commission is to protect the public from exploitation by monopolistic utilities: "[T]he dominant thought and purpose of the policy is the protection of the public while the protection given the utility is merely incidental."<sup>84</sup>

Spire has asserted – with no analysis, examination of statutes or citation of controlling authorities -- that the Commission has no jurisdiction over it because it is a holding company and not a "gas corporation" or "public utility" within the intendments of § 386.020, RSMo.<sup>85</sup> As has been explained at some length, the Commission is a

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<sup>82</sup> *May Department Stores Co. v. Union Electric Light & Power Co.*, 341 Mo. 299, 317, 107 S.W.2d 41, 49 (1937). Fairness does not mean, however, that every customer pays the same rate: "Of course, this required classification for rates and service on the basis of location, amount used, and other reasonable considerations[.]" *Id.*

<sup>83</sup> *State ex rel. Electric Co. of Missouri v. Atkinson*, 275 Mo. 325, \_\_\_, 204 S.W. 897, 899 (1918).

<sup>84</sup> *State ex rel. Crown Coach Co. v. Public Service Com'n*, 238 Mo.App. 287, \_\_\_, 179 S.W.2d 123, 126 (1944).

<sup>85</sup> *Spire Inc.'s Verified Response Opposing Public Counsel's Motion to Open An Investigation*, pp. 1-3.

creature of statute and its jurisdiction in any situation must be found by reference to the plain language of the Missouri statutes.<sup>86</sup> However, appropriate statutory language is not hard to discover. Section 386.250, RSMo, provides:

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter (1) To the manufacture, sale or distribution of gas, natural and artificial, . . . for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to gas . . . plants, and to persons or corporations owning, leasing, operating or controlling the same[.]

The cited language is somewhat complex. First, it grants jurisdiction to the Commission over two activities or entities, “the manufacture, sale or distribution of gas, natural or artificial, for light, heat and power, within the state” and “gas plants.” Second, in each case, it also grants jurisdiction to the Commission over “persons or corporations owning, leasing, operating or controlling the same.” Spire, as it insists, does not itself either manufacture, distribute or sell gas or have gas plants directly; but it is a corporation that controls both the distribution and retail sale of gas and gas plants by virtue of its ownership and control of Laclede and MGE. Section 386.250(1), RSMo., by its plain language, establishes Commission jurisdiction over gas utility holding companies.

This conclusion is reinforced by other language in the Public Service Commission Law. Section 386.020(18), RSMo., provides that a “gas corporation” is “every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any gas plant operating for public use under privilege, license or franchise now or hereafter granted by the state or

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<sup>86</sup> *UCCM, supra*, 585 S.W.2d at 47.

any political subdivision, county or municipality thereof[.]” “Gas plant,” in turn, “includes all real estate, fixtures and personal property owned, operated, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power[.]” Section 386.020(19), RSMo. Like § 386.250(1), RSMo., the scope of §§ 386.020, (18) and (19), RSMo., extends to and encompasses Spire. A corporation need not own or operate gas plant to be subject to regulation, mere control is sufficient. And Spire certainly does control the gas plant owned and operated by LGC and MGE. The Missouri Supreme Court recognized long ago that a corporation and its subsidiary can together constitute an “enterprise” whose activities render it subject to regulation by the Commission.<sup>87</sup> The United States Supreme Court has recognized the same principle:

North American concedes that four of its direct utility subsidiaries, Union Electric Company of Missouri, Washington Railway and Electric Company, North American Light & Power Company and Wisconsin Electric Power Company, transmit energy across state lines and hence are engaged in interstate commerce. It further concedes that its subsidiary West Kentucky Coal Company is engaged in interstate commerce, although contending that the remaining five direct subsidiaries are not so engaged. In view of North American's very substantial stock interest and its domination as to the affairs of its subsidiaries, as well as its latent power to exercise even more affirmative influence, it cannot hide behind the facade of a mere investor. Their acts are its acts in the sense that what is interstate as to them is interstate as to North American. These subsidiaries thus accentuate and add materially to the interstate character of North American. They make even more inescapable the conclusion that North American bears not only a highly important relation to interstate commerce and the national economy, but is actually engaged in interstate commerce. It is thus subject to appropriate regulatory measures adopted by Congress under its commerce power.<sup>88</sup>

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<sup>87</sup> *May Department Stores Co. v. Union Electric Light & Power Co.*, 341 Mo. 299, 324-328, 107 S.W.2d 41, 53-56 (Mo. 1937).

<sup>88</sup> *North American Company v. Sec. & Exch. Comm'n*, 327 U.S. 686, 695-96, 66 S. Ct. 785, 791-92, 90 L. Ed. 945 (1946).

Like North American Company, Spire “dominates” its subsidiaries through its outright ownership of them and “its latent power to exercise even more affirmative influence” over LGC, and LGC’s acts are therefore Spire’s acts.

The care that the legislature took to extend the Commission’s authority to both gas utilities and gas utility holding companies is understandable in view of the palpable detriments to the public interest caused by such holding companies in the past:

The dominant characteristic of a holding company is the ownership of securities by which it is possible to control or substantially to influence the policies and management of one or more operating companies in a particular field of enterprise. To be sure, other devices may be utilized to effectuate control, such as voting trusts, interlocking directors and officers, the control of proxies, management contracts and the like. But the concentrated ownership of voting securities is the prime method of achieving control, constituting a more fundamental part of holding companies than of other types of business. Public utility holding companies are thereby able to build their gas and electric utility systems, often gerrymandered in such ways as to bear no relation to economy of operation or to effective regulation. The control arising from this ownership of securities also allows such holding companies to exact unreasonable fees, commissions and other charges from their subsidiaries, to make undue profits from the handling of the issue, sale and exchange of securities for their subsidiaries, to issue unsound securities of their own based upon the inflated value of the subsidiaries, and to affect adversely the accounting practices and the rate and dividend policies of the subsidiaries. Congress has found that all of these various abuses and evils occur and are spread and perpetuated through the mails and the channels of interstate commerce. And Congress has further found that such interstate activities, which grow out of the ownership of securities of operating companies, have caused public utility holding companies to be “affected with a national public interest.”<sup>89</sup>

While the public’s first line of defense against such holding companies and the abuses they perpetrated was erected by the federal government through the Public Utility Holding Company Act of 1935 (“PUHCA”) and the Securities and

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<sup>89</sup> *North American Company v. Sec. & Exch. Comm’n*, *supra*, 327 U.S. at 701-02, 66 S. Ct. at 794-95, 90 L. Ed. at \_\_\_\_ - \_\_\_\_.

Exchange Commission ("SEC"), the states were free to supplement the federal efforts.<sup>90</sup> PUHCA provided in relevant part that it did not preempt additional state jurisdiction over utility holding companies.<sup>91</sup> While state jurisdiction could not conflict with any provision of PUHCA, it could supplement it.<sup>92</sup>

PUHCA was repealed in 2005, but the applicable provisions of the Missouri Public Service Commission Law are still in force. In the past, the Commission has often chosen to not exert its authority over holding companies and has even, as Spire has pointed out, denied that such authority exists.<sup>93</sup> Administrative agencies are not bound by *stare decisis*, nor are PSC decisions binding precedent on any court.<sup>94</sup> These decisions have no effect on the scope of the jurisdiction granted by the statutes to the Commission.

### **C. Regulation of the Natural Gas Industry:**

The natural gas industry in the United States has developed similarly in most states so that there is an agency in each state that is the equivalent of the Missouri PSC.<sup>95</sup> Generically, these are often referred to as "PUCs"; that is, public utility

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<sup>90</sup> The purpose of PUHCA was to supplement State regulation, not supplant it. See *Rochester Telephone Corp. v. Public Service Comm'n of State of New York*, 201 A.D.2d 31, 614 N.Y.S.2d 454, 457 (1994); *Alabama Elec. Co-op., Inc. v. Securities and Exchange Comm'n*, 353 F.2d 905, 907 (D.C.Cir.1965).

<sup>91</sup> 15 U.S.C. § 79a; repealed, Pub. L. 109-58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974.

<sup>92</sup> *Id.*

<sup>93</sup> *Spire Inc.'s Verified Response Opposing Public Counsel's Motion to Open an Investigation*, pp. 2-3.

<sup>94</sup> *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n of State*, 120 S.W.3d 732, 736 (Mo. banc 2003).

<sup>95</sup> See [www.naruc.org/about-naruc/regulatory-commissions](http://www.naruc.org/about-naruc/regulatory-commissions): "Founded in 1889, the National Association of Regulatory Utility Commissioners (NARUC) is a non-profit organization dedicated to representing the State public service commissions who regulate the utilities that provide essential services such as energy, telecommunications, power, water, and transportation. NARUC's members include all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. Most State commissioners are appointed to their positions by their Governor or Legislature, while commissioners in

commissions. Each is an agency of state government that exercises equivalent police powers over the rates and other intrastate activities of (at least) the state's investor-owned public utility companies providing natural gas utility service.<sup>96</sup>

The interstate aspects of the natural gas industry are another matter. FERC regulates the transmission and sale of natural gas for resale in interstate commerce and the siting and abandonment of natural gas pipelines and storage facilities.<sup>97</sup> The Natural Gas Act authorizes FERC "to regulate the 'rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission \* \* \*.' 'Natural-gas company' is defined by § 2(6) of the Act to mean 'a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.'<sup>98</sup> However, Congress specifically exempted intrastate natural gas transportation, local distribution of natural gas, and the production and gathering of natural gas from federal regulation by the FERC.<sup>99</sup> The natural gas industry, therefore, operates in a dual regulatory framework. The interstate transportation and sale at wholesale of natural gas are regulated by the FERC, while the local transportation, distribution and retail sale of natural gas are regulated by the state PUC.

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14 States are elected. Our mission is to serve in the public interest by improving the quality and effectiveness of public utility regulation. Under State law, NARUC's members have an obligation to ensure the establishment and maintenance of utility services as may be required by law and to ensure that such services are provided at rates and conditions that are fair, reasonable and nondiscriminatory for all consumers."

<sup>96</sup> *State ex rel. Chicago, R. I. & P. R. Co. v. Pub. Serv. Comm'n*, 312 S.W.2d 791, 796 (Mo. banc 1958): "The public service commission is essentially an agency of the Legislature and its powers are referable to the police power of the state."

<sup>97</sup> FERC website: "What FERC Does"; retrieved August 23, 2016.

<sup>98</sup> *Phillips Petroleum Co. v. State of Wis.*, 347 U.S. 672, 676, 74 S. Ct. 794, 796, 98 L.Ed. 1035 (1954).

<sup>99</sup> 15 U.S.C. § 717(b).

**D. The Commission's Jurisdiction over Spire and the Acquisitions:**

The question of jurisdiction is really, "jurisdiction to do what?" A tribunal may have jurisdiction to do some things, but not others. The Commission has already recognized that it has jurisdiction to investigate the proposed transaction and to consider its possible deleterious effects on Missouri ratepayers. As the Commission put it, "the Commission has a duty to determine whether the transactions threaten Missouri ratepayers. If so, jurisdiction over the transactions may be necessary for an appropriate remedy."<sup>100</sup> In that sense, the question of jurisdiction is the question of the Commission's authority to impose a particular remedy or condition in the event that it determines that the proposed transaction would otherwise be detrimental to the public interest.

Staff has already discussed the Commission's jurisdiction over Spire by virtue of its ownership and control of a gas corporation that uses gas plant to distribute gas to the public at retail in Missouri. The primary and most fundamental basis of jurisdiction is a party's presence in the forum. The Supreme Court said in a historic case:

One of these principles is, that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. As a consequence, every State has the power to determine for itself the civil status and capacities of its inhabitants; to prescribe the subjects upon which they may contract, the forms and solemnities with which their contracts shall be executed, the rights and obligations arising from them, and the mode in which their validity shall be determined and their obligations enforced; and also they regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed, and transferred. The other principle of public law referred to follows from the one mentioned; that is, that no State can exercise direct jurisdiction and authority over persons or property without its territory.<sup>101</sup>

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<sup>100</sup> *Order Granting Motion to Open Investigation and Directing Filing*, p. 5.

<sup>101</sup> *Pennoyer v. Neff*, 95 U.S. 714, 722, 24 L. Ed. 565 (1877).



Spire is headquartered in Missouri and it owns, operates and controls Missouri's largest gas distribution utility. Moreover, Spire is a Missouri creation – it is a Missouri general business corporation; its very existence is a matter of Missouri law. By virtue of its creation in Missouri, Spire is a citizen of Missouri and a Missouri resident.<sup>102</sup> Spire is undeniably present in the forum in the traditional sense.

Moreover, the Commission authorized Spire's creation by its order in Case No. GM-2001-342 permitting Laclede to reorganize. Spire executed the *Unanimous Stipulation and Agreement* as a *quid pro quo* for the Commission's authority for Laclede's reorganization;<sup>103</sup> the Commission adopted the *Unanimous Stipulation and Agreement* as a condition upon Laclede's reorganization, as § 393.250.3, RSMo., expressly authorizes. The Commission, by virtue of the Public Service Commission Law and Spire's presence in the forum, has authority over Spire that it lacks with respect to foreign holding companies that are not Missouri entities and which do not live in Missouri.<sup>104</sup> Spire asserts that this will put it at a competitive disadvantage with respect to non-Missouri holding companies, but that should not be a matter of concern to this Commission. The Commission's interest is that Spire continues, through its subsidiaries, to provide safe and adequate utility service to its Missouri ratepayers at just and reasonable rates.

The focus of Staff's investigation upon possible detriments to the interest of the public or of Missouri ratepayers reflects the legal standard that governs utility mergers

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<sup>102</sup> See generally *State ex rel. Henning v. Williams*, 345 Mo. 22, 131 S.W.2<sup>nd</sup> 561 (Mo. banc 1939), overruled on other grounds, *State ex rel. Webb v. Satz*, 561 S.W.2d 113 (Mo. banc 1978).

<sup>103</sup> *State ex rel. Laclede Gas Co. v. Public Serv. Comm'n of Mo.*, 392 SW3 24, 34 (Mo. App., W.D. 2012).

<sup>104</sup> Though they may be subject to suit in Missouri.

and acquisitions in Missouri. A public utility must obtain prior authorization from the PSC to sell, assign, lease, or transfer utility assets,<sup>105</sup> to merge or consolidate,<sup>106</sup> to raise capital by issuing stock, notes, or bonds, or by mortgaging property,<sup>107</sup> and to acquire the stock of another utility.<sup>108</sup> The standard applicable to the Commission's exercise of this authority is whether or not the proposed action is likely to be detrimental to the public interest. By virtue of the Public Service Commission Law, this Commission has the same jurisdiction over Spire's activities that it has over those of a gas distribution utility such as Laclede.

1. Section 393.190.1, RSMo.

Section 393.190.1, RSMo., provides:

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void. The permission and approval of the commission to the exercise of a franchise or permit under this chapter, or the sale, assignment, lease, transfer, mortgage or other disposition or encumbrance of a franchise or permit under this section

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<sup>105</sup> Section 393.190.1, RSMo.; see Rule 4 CSR 240-3.110, electric utilities; Rule 4 CSR 240-3.210, gas utilities; Rule 4 CSR 240-3.310, sewer utilities; 4 CSR 240-3.405, steam heat utilities; 4 CSR 240-3.605, water utilities.

<sup>106</sup> Section 393.190.1, RSMo.; see Rule 4 CSR 240-3.115, electric utilities; Rule 4 CSR 240-3.215, gas utilities; Rule 4 CSR 240-3.315, sewer utilities; 4 CSR 240-3.410, steam heat utilities; 4 CSR 240-3.610, water utilities.

<sup>107</sup> See §§ 393.180, 393.200, 393.210, and 393.220, RSMo.; and see Rule 4 CSR 240-3.120, electric utilities; Rule 4 CSR 240-3.220, gas utilities; Rule 4 CSR 240-3.320, sewer utilities; 4 CSR 240-3.415, steam heat utilities; 4 CSR 240-3.615, water utilities.

<sup>108</sup> See § 393.190.2, RSMo.; and see Rule 4 CSR 240-3.125, electric utilities; Rule 4 CSR 240-3.225, gas utilities; Rule 4 CSR 240-3.325, sewer utilities; 4 CSR 240-3.420, steam heat utilities; 4 CSR 240-3.620, water utilities.

shall not be construed to revive or validate any lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or to waive any forfeiture. \* \* \* Nothing in this subsection contained shall be construed to prevent the sale, assignment, lease or other disposition by any corporation, person or public utility of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such corporation, person or public utility shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value.

The leading case states:

Before a utility can sell assets that are necessary or useful in the performance of its duties to the public it must obtain approval of the Commission. The obvious purpose of this provision is to ensure the continuation of adequate service to the public served by the utility. The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.<sup>109</sup>

That case relied, in turn, on an older Missouri Supreme Court case stating:

The owners of this stock should have something to say as to whether they can sell it or not. To deny them that right would be to deny to them an incident important to ownership of property. A property owner should be allowed to sell his property unless it would be detrimental to the public.

The state of Maryland has an identical statute with ours, and the Supreme Court of that state . . . said: "To prevent injury to the public, in the clashing of private interest with the public good in the operation of public utilities, is one of the most important functions of Public Service Commissions. It is not their province to insist that the public shall be benefited, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public detriment. 'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public.'"<sup>110</sup>

Given that the purpose of § 393.190.1, RSMo., is to ensure the continuation of adequate service to the public, the Commission typically has considered such factors as

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<sup>109</sup> *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App., E.D. 1980) (internal citations omitted).

<sup>110</sup> *State ex rel. City of St. Louis v. P.S.C.*, 335 Mo. 448, 459-460, 73 S.W.2d 393, 400 (Mo. banc 1934) (internal citations omitted).

the applicant's experience in the utility industry; the applicant's history of service difficulties, if any; the applicant's general financial health and ability to absorb the proposed transaction; and the applicant's ability to operate the assets safely and efficiently.<sup>111</sup> The Commission has sometimes said that denial of such an application requires compelling evidence on the record that a public detriment is likely to occur,<sup>112</sup> but has also said that the mere risk of harm to the ratepayers is a detriment to the public interest.<sup>113</sup> The Commission has determined that the applicable standard requires a cost-benefit analysis:

What is required is a cost-benefit analysis in which all of the benefits and detriments in evidence are considered. . . . Approval should be based upon a finding of no net detriment. \* \* \* In considering whether or not the proposed transaction is likely to be detrimental to the public interest, the Commission notes that its duty is to ensure that UE provides safe and adequate service to its customers at just and reasonable rates. A detriment, then, is any direct or indirect effect of the transaction that tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable. The presence of detriments, thus defined, is not conclusive to the Commission's ultimate decision because detriments can be offset by attendant benefits. The mere fact that a proposed transaction is not the least cost alternative or will cause rates to increase is not detrimental to the public interest where the transaction will confer a benefit of equal or greater value or remedy a deficiency that threatens the safety or adequacy of the service.<sup>114</sup>

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<sup>111</sup> See *In the Matter of the Joint Application of Missouri Gas Energy, et al.*, Case No. GM-94-252 (*Report and Order*, issued October 12, 1994), 3 Mo. P.S.C.3rd 216, 220.

<sup>112</sup> See, e.g., *In the Matter of KCP&L*, Case No. EM-2001-464 (*Order Approving Stipulation & Agreement and Closing Case*, issued Aug. 2, 2001).

<sup>113</sup> *In the Matter of Aquila, Inc.*, Case No. EF-2003-0465 (*Report & Order*, issued Feb. 24, 2004) pp. 6-7.

<sup>114</sup> *In the Matter of Union Electric Company, d/b/a AmerenUE*, 13 MoPSC3d 266, 293 (2005); and see *In the Matter of Great Plains Energy, Inc., Kansas City Power & Light Company and Aquila, Inc.*, 17 Mo.P.S.C.3d 338, 541 (2008), "the Commission may not withhold its approval of the proposed transaction unless the Applicants fail in their burden to demonstrate that the transaction is not detrimental to the public interest, and detriment is determined by performing a balancing test where attendant benefits are weighed against direct or indirect effects of the transaction that would diminish the provision of safe or adequate of service or that would tend to make rates less just or less reasonable."

Additionally, "what constitutes the 'public interest'" is "a matter of policy to be determined by the Commission."<sup>115</sup> In any proceeding on such an application, the applicant bears the burden of proof.<sup>116</sup>

In the present case, Spire is *buying or has bought* a public utility, not selling one. Section 393.190.1, RSMo., therefore, does not apply. However, the standard described above, developed in cases involving § 393.190.1, RSMo., also applies to § 393.190.2, RSMo.

## 2. Section 393.190.2, RSMo.

Section 393.190.2, RSMo., provides:

No such corporation [i.e., a gas corporation, electrical corporation, water corporation or sewer corporation] shall directly or indirectly acquire the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business, or proposing to operate or operating under a franchise from the same or any other municipality; neither shall any street railroad corporation acquire the stock or bonds of any electrical corporation, unless, in either case, authorized so to do by the commission. Save where stock shall be transferred or held for the purpose of collateral security, no stock corporation of any description, domestic or foreign, other than a gas corporation, electrical corporation, water corporation, sewer corporation or street railroad corporation, shall, without the consent of the commission, purchase or acquire, take or hold, more than ten percent of the total capital stock issued by any gas corporation, electrical corporation, water corporation or sewer corporation organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the capital stock of any gas corporation, electrical corporation, water corporation or sewer corporation may, with the consent of the commission, acquire and hold the remainder of the capital stock of such gas corporation, electrical corporation, water corporation or sewer corporation, or any portion thereof.

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<sup>115</sup> 17 Mo.P.S.C.3d at 543.

<sup>116</sup> *Id.*

In holding this statute to be constitutional despite its unabashed application to extra-territorial transactions, the 8<sup>th</sup> Circuit Court of Appeals said:<sup>117</sup>

For over fifty years, Congress has regulated the interstate transmission of natural gas (the Natural Gas Act), the interstate transmission of electric power (the Federal Power Act), and the ownership of utilities (the Public Utility Holding Company Act of 1935). A major purpose of these laws was to preserve and protect state and local regulation of the distribution of natural gas and electricity to local retail customers.

The statute here at issue [§393.190.2, RSMo.] is part of Chapter 393 of the Missouri Statutes, which authorizes the Commission to establish “just and reasonable” rates for the local distribution of natural gas, electricity, water, and sewer services. Rate regulation is a complex process. A public utility’s investments in other companies can affect its regulated rate of return, if investment losses are allocated to the regulated business. Transactions between affiliated utilities can present rate regulators with difficult issues of preferential treatment and cost allocation. The abuses Congress identified in enacting the Public Utility Holding Company Act attest to the long-standing regulatory concern over interlocking ownership and management of public utilities. This concern does not mean that Southern Union’s acquisition strategy is necessarily contrary to the public interest, but it tends to confirm the presumptive validity of Missouri regulating that strategy by requiring pre-acquisition approval.

The Commission asserts that § 393.190.2 is part of its rate regulation responsibilities. Southern Union does not deny that assertion, and the administrative record in this proceeding supports it. For this reason, Southern Union’s contention that this is merely “extraterritorial” regulation of interstate commerce is incorrect. Though Southern Union’s stock purchases are no doubt conducted from its corporate headquarters in Texas, the Commission scrutinizes these transactions because they potentially affect the company’s regulated rate of return in Missouri. Thus, § 393.190.2 regulates interstate stock purchases because of their impact on Southern Union’s regulated local activities in Missouri. Likewise, calling this “direct” regulation of interstate commerce does not make it per se unlawful. As the Fourth Circuit observed, the direct/indirect distinction is not analytically helpful when a state statute regulates interstate stock transactions for the purpose of protecting local consumers from public utility abuses.<sup>118</sup>

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<sup>117</sup> *Southern Union Co. v. Missouri Pub. Serv. Comm’n*, 289 F.3d 503, 507-08 (8th Cir. 2002).

<sup>118</sup> *Baltimore Gas & Elec. Co. v. Heintz*, 760 F.2d 1408, 1421 (4th Cir.1985).

By its express terms, § 393.190.2, RSMo., requires Spire to obtain the Commission's *prior authorization* when it acquires the stocks or bonds of a public utility ("the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business"). Spire's acquisitions of Alagasco and EnergySouth, therefore, require the prior approval of this Commission; an approval that Spire has not sought. Whether that approval would be granted would be governed by the Commission's application of the "not detrimental to the public interest" standard.

3. Section 393.250, RSMo.

Section 393.250, RSMo., provides:

1. Reorganizations of gas corporations, electrical corporations, water corporations and sewer corporations shall be subject to the supervision and control of the commission, and no such reorganization shall be had without the authorization of the commission.

2. Upon all such reorganizations the amount of capitalization, including therein all stocks and bonds and other evidence of indebtedness, shall be such as is authorized by the commission, which in making its determinations, shall not exceed the fair value of the property involved, taking into consideration its original cost of construction, duplication cost, present condition, earning power at reasonable rates and all other relevant matters and any additional sum or sums as shall be actually paid in cash; provided, however, that the commission may make due allowance for the discount of bonds.

3. Any reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the commission. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary.

The *Unanimous Stipulation and Agreement* that Spire and Laclede executed in Case No. GM-2001-342 contained a series of specific conditions and the Commission's approval of Laclede's reorganization into a holding company (originally The Laclede Group, Inc., now Spire) with an operating subsidiary (Laclede Gas) was predicated

upon compliance with those conditions. Section 393.250.3, RSMo., expressly authorizes the Commission's imposition of conditions on a reorganization, so they are presumptively valid. Spire's commitment in the *Unanimous Stipulation and Agreement* to seek Commission approval of future acquisitions was at least an acknowledgement that such is required by the Public Service Commission Law.

Spire acquired Alagasco in 2014 and is now in the process of acquiring EnergySouth; but Spire has not sought Commission approval for either acquisition. Alagasco is a regulated natural gas distribution company and a public utility; EnergySouth is a holding company that owns two regulated natural gas distribution companies and public utilities. Staff necessarily must conclude that Spire has violated the *Unanimous Stipulation and Agreement* and the Commission's order approving the *Unanimous Stipulation and Agreement* and authorizing Laclede's reorganization subject to the conditions contained in the *Unanimous Stipulation and Agreement*. Neither acquisition need be detrimental; the violations were complete when the acquisition occurred without the Commission's prior approval.

#### 4. Section 386.390.1, RSMo.

Separate from jurisdiction over the transaction itself, the Commission has complaint jurisdiction over "any corporation, person or public utility" for violating or failing to comply with the Commission's orders. Section 386.390.1, RSMo., provides:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, *setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be*



*in violation, of any provision of law, or of any rule or order or decision of the commission. . . .(Emphasis added)*

Also, Section 386.570.1, RSMo., states that:

*Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense. (Emphasis added)*

Section 386.020(11), RSMo., defines "corporation" as follows:

"Corporation" includes a corporation, company, association and joint stock association or company

There is no question that Spire, Inc. (formerly known as The Laclede Group, Inc.) is a "corporation." The Laclede Group, Inc., was a signatory to the *Unanimous Stipulation and Agreement* in Case No. GM-2001-342.<sup>119</sup> As the Commission recognized in its *Order Granting Motion to Open an Investigation and Directing Filing* issued on July 20, 2016, in this docket (GM-2016-0342), "Spire . . . became the holding company for Laclede Gas Company only by the Commission's order in a 2001 case ("reorganization case")," citing to the GM-2001-342 case. That 2001 Commission order in Case No. GM-2001-342 approved the *Unanimous Stipulation and Agreement* signed by The Laclede Group (now Spire), while recognizing that the stipulation contained certain conditions and stated that "The conditions relate to such matters as financial constraints, access to information, *prior authorization from the Missouri Public Service Commission for mergers and acquisitions*, method of cost

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<sup>119</sup> *In the Matter of the Application of Laclede Gas Company for an Order Authorizing its Plan to Restructure Itself into a Holding Company, Regulated Utility Company, and Unregulated Subsidiaries*, Case No. GM-2001-342 (*Unanimous Stipulation and Agreement*, filed July 9, 2001).

allocation, and reporting requirements.” (Emphasis added) The 2001 order also specifically stated that it authorized Laclede Gas Company to reorganize “*subject to the conditions contained in the Unanimous Stipulation and Agreement.*” (Emphasis added)

As the Commission stated in its order opening this investigation, one of the conditions contained in the 2001 stipulation was that

*The Laclede Group, Inc. [now Spire] agrees that it will not, directly or indirectly, acquire or merge with or allow itself to be acquired by or merged with, a public utility or the affiliate of a public utility, where the affiliate has a controlling interest in a public utility, or seek to become a registered holding company, or take any action which has a material possibility of making it a registered holding company or of subjecting all or a portion of its Missouri intrastate gas distribution operations to FERC jurisdiction, without first requesting and, if considered by the Commission, obtaining prior approval from the Commission and a finding that the transaction is not detrimental to the public, provided that for purposes of acquisitions by the Holding Company only, public utility shall mean a natural gas or electric public utility.*<sup>120</sup> (Emphasis added)

As the Commission also stated in its order opening this investigation, each of the events listed in the foregoing paragraph of the 2001 stipulation “is listed in the disjunctive with acquisition or merger, so the prior approval applies to any one of those events.”

Spire has given no indication that it intends to request the Commission’s approval of its acquisition of EnergySouth or a finding that the transaction is not detrimental to the public.<sup>121</sup> Such lack of action would constitute a violation/failure to comply with the Commission’s 2001 order and the stipulation in GM-2001-342 and subject Spire to the Commission’s complaint jurisdiction.

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<sup>120</sup> *Id.*, pp. 9-10.

<sup>121</sup> Spire/The Laclede Group did not formally request the Commission’s approval of its acquisition of Alagasco either; however, the Alagasco transaction was discussed during Laclede’s presentations to the Commission regarding its acquisition of MGE as discussed elsewhere in this report.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

##### **A. Conclusions:**

The “not detrimental to the public interest” standard requires a cost-benefit analysis.<sup>122</sup> Staff is not aware of any benefits that the transactions have or will confer on the Missouri ratepayers of Laclede and MGE; but has identified potential detriments. Those detriments include higher capital costs due to Spire’s debt burden, taken on to fund its acquisitions, and costs improperly allocated to Spire’s Missouri operating company.

##### **B. Recommendations:**

The Alagasco acquisition is complete and cannot be undone; the EnergySouth acquisition is quite small. Therefore, Staff recommends that the best way to address the detriments it has identified is in the context of a general rate case for Laclede Gas Company. Additionally, Staff will pursue a complaint against Spire for its failure to seek prior approval from this Commission for the acquisitions of Alagasco and EnergySouth.

**WHEREFORE**, Staff prays that the Commission will accept its *Report* of its investigation of Spire's acquisitions of Alagasco and Energy South.

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<sup>122</sup> *In the Matter of Union Electric Company, d/b/a AmerenUE*, 13 MoPSC3d 266, 293 (2005); and see *In the Matter of Great Plains Energy, Inc., Kansas City Power & Light Company and Aquila, Inc.*, 17 Mo.P.S.C.3d 338, 541 (2008).

Respectfully submitted,

/s/ Kevin A. Thompson

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Missouri Bar Number 36288  
Chief Staff Counsel

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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, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 1<sup>st</sup> day of September, 2016, on the Public Counsel and on counsel for Spire and Laclede.

/s/ Kevin A. Thompson

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

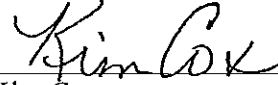
In the Matter of Great Plains Energy, Inc.'s        )  
Acquisition of Westar Energy, Inc., and        )        Case No. GM-2016-0342  
Related Matters                                        )

**AFFIDAVIT OF KIM COX**

STATE OF MISSOURI        )  
  ) ss  
COUNTY OF COLE        )

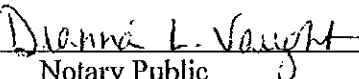
**COMES NOW** Kim Cox, and on her oath states that she is of sound mind and lawful age; that she contributed to the foregoing Staff Investigation Report; and that the same is true and correct according to her best knowledge and belief.

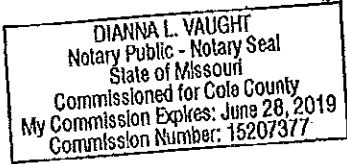
Further the Affiant sayeth not.

  
\_\_\_\_\_  
Kim Cox

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 1<sup>st</sup> day of September, 2016.

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





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

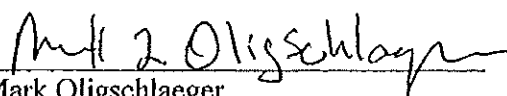
In the Matter of Great Plains Energy, Inc.'s        )  
Acquisition of Westar Energy, Inc., and         )         Case No. GM-2016-0342  
Related Matters   )

**AFFIDAVIT OF MARK L. OLIGSCHLAEGER**

STATE OF MISSOURI        )  
  ) ss  
COUNTY OF COLE         )

**COMES NOW** Mark Oligschlaeger, and on his oath states that he is of sound mind and lawful age; that he contributed to the foregoing Staff Investigation Report; and that the same is true and correct according to his best knowledge and belief.

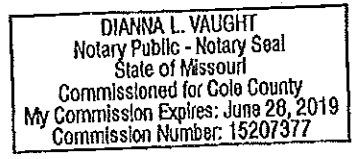
Further the Affiant sayeth not.

  
\_\_\_\_\_  
Mark Oligschlaeger

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 1st day of September, 2016.

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



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

In the Matter of Great Plains Energy, Inc.'s     )  
Acquisition of Westar Energy, Inc., and     )     Case No. GM-2016-0342  
Related Matters     )

**AFFIDAVIT OF DAVID MURRAY**

STATE OF MISSOURI     )  
   ) ss  
COUNTY OF COLE     )

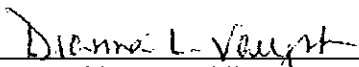
**COMES NOW** David Murray, and on his oath states that he is of sound mind and lawful age; that he contributed to the foregoing Staff Investigation Report; and that the same is true and correct according to his best knowledge and belief.

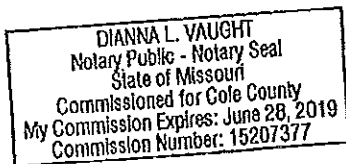
Further the Affiant sayeth not.

  
\_\_\_\_\_  
David Murray

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 15 day of September, 2016.

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





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

In the Matter of Great Plains Energy, Inc.'s )  
Acquisition of Westar Energy, Inc., and )  
Related Matters )

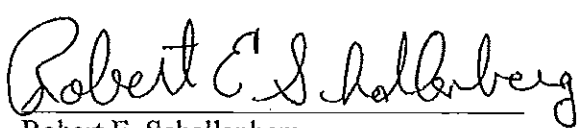
Case No. GM-2016-0342

**AFFIDAVIT OF ROBERT E. SCHALLENBERG**

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF COLE     )

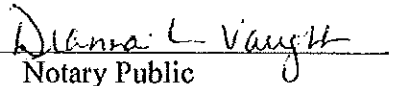
**COMES NOW** Robert E. Schallenberg, and on his oath states that he is of sound mind and lawful age; that he contributed to the foregoing Staff Investigation Report; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

  
\_\_\_\_\_  
Robert E. Schallenberg

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 31<sup>st</sup> day of August, 2016.

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

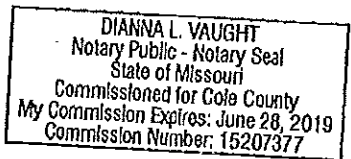


Exhibit No.:  
Issue: SERP; Severance  
Witness: Ellen E. Fairchild  
Type of Exhibit: Rebuttal Testimony  
Sponsoring Party: KCP&L Greater Missouri Operations Company  
Case No.: ER-2010-0356  
Date Testimony Prepared: December 15, 2010

**MISSOURI PUBLIC SERVICE COMMISSION**

**CASE NO.: ER-2010-0356**

**REBUTTAL TESTIMONY**

**OF**

**ELLEN E. FAIRCHILD**

**ON BEHALF OF**

**KCP&L GREATER MISSOURI OPERATIONS COMPANY**

**Kansas City, Missouri  
December 2010**

**REBUTTAL TESTIMONY**

**OF**

**ELLEN E. FAIRCHILD**

**Case No. ER-2010-0356**

1 **Q: Please state your name and business address.**

2 A: My name is Ellen E. Fairchild. My business address is 1200 Main Street, Kansas City,  
3 Missouri, 64105.

4 **Q: By whom and in what capacity are you employed?**

5 A: I am employed by Kansas City Power & Light Company ("KCP&L" or the "Company")  
6 as Vice President, Corporate Secretary and Chief Compliance Officer.

7 **Q: What are your responsibilities?**

8 A: In my Corporate Secretary role, I work closely with the Chairman of the Board, Board  
9 Committee Chairs, and other Directors in planning, organizing and conducting meetings.  
10 In addition, as part of the Secretary role I support the Compensation and Development  
11 Committee of the Board, and I am responsible for the day-to-day administration of all  
12 executive compensation matters. In my Compliance Officer role, I manage the  
13 communication, institutionalization and monitoring of the Company's programs to  
14 comply with requirements mandated by numerous federal and state agencies throughout  
15 the Company.

16 **Q: Please describe your experience and employment history.**

17 A: I have a Bachelor of Arts in Accounting from Baker University, Baldwin City, Kansas,  
18 and a Master of Business Administration from Rockhurst University, Kansas City,  
19 Missouri. Prior to joining Great Plains Energy/KCP&L in 2008, I spent 3 years with a

1 small boutique public relations firm and prior to that I spent 16 years (1986-2002) with  
2 Aquila, Inc. (Missouri Public Service / UtiliCorp United Inc.). At Aquila, I served in a  
3 variety of roles including accounts payable, shareholder relations, internal audit, finance  
4 and investor relations. When I left Aquila in 2002, I was Vice President, Investor  
5 Relations. I joined KCP&L in January 2008 as Director, Investor Relations. I was  
6 promoted to Senior Director Investor Relations and Assistant Secretary in June 2010 and  
7 to my current position in October 2010.

8 **Q: Have you previously testified in a proceeding before the Missouri Public Service  
9 Commission (“Commission” or “MPSC”)?**

10 **A:** I provided Rebuttal Testimony in KCP&L’s Case No. ER-2010-0355. Also, I testified  
11 before the Kansas Corporation Commission in Docket No. 10-KCPE-415-RTS.

12 **Q: What is the purpose of your testimony?**

13 **A:** The purpose of my testimony is to rebut the Direct Testimony of staff witness Charles R.  
14 Hyneman of the Missouri Public Service Commission Staff concerning KCP&L Greater  
15 Missouri Operations Company (“GMO”) supplemental executive retirement plan  
16 (“SERP”) payments and to rebut Staff’s adjustments E129.2 (MPS) and E135.1 (L&P) to  
17 remove severance costs from costs of service, as reflected in Staff’s Accounting  
18 Schedules. This rebuttal pertains to these issues for both of GMO’s regulated  
19 jurisdictions, MPS and L&P.

20 **SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN (SERP) EXPENSE**

21 **Q: Do you agree with Staff’s proposed treatment of the Company’s SERP expenses?**

22 **A:** I have four areas of concern regarding Mr. Hyneman’s SERP expense recommendations:

- 23 1. Exclusion of lump-sum payments;

1           2. Reduction of SERP expense based on a 2005 exclusion factor tied to executive  
2 titles;

3           3. Reduction of SERP expense of two Aquila executives because the amount was  
4 perceived to be too high based on a “benchmark” payment to one individual with  
5 22 years of service; and

6           4. The exclusion of all Aquila SERP allocations to L&P due to the 2001 merger  
7 of St. Joseph Light & Power Company and UtiliCorp United.

8 While I do have a number of areas of disagreement, I do agree with Mr. Hyneman’s  
9 rational for not allocating any SERP expense to capital; the reduction of monthly annuities  
10 by 20 percent to reflect that some SERP expense was based on bonus payments and  
11 incentive compensation which were not included in cost of service; and the exclusion of  
12 SERP for former L&P executives and certain former Aquila executives.

13 **Q: Please explain your concern with Staff’s proposed treatment of the Company’s**  
14 **lump-sum SERP expenses?**

15 **A:** Mr. Hyneman recognizes that during the test period GMO made varying levels of annuity  
16 based and lump-sum SERP payments. However, he incorrectly excluded lump-sum  
17 SERP payments in his cost of service recommendation. He recommends that only  
18 GMO’s 2009 annuity-related SERP payments meet the known and measurable test and  
19 should be included in cost of service in this case. In the Stipulation and Agreement as to  
20 Certain Issues in the Aquila’s Case No. ER-2007-0004, approved by the Commission on  
21 April 12, 2007, it was agreed that the Company would account for SERP payments on a  
22 pay as you go method. Yet, the known and measurable lump-sum amounts paid in 2009  
23 were excluded in the cost of service in this case.

1 **Q: What were the amounts of lump-sum SERP payments made during the test period?**

2 A: The lump-sum SERP payments during the test period that should be included in the  
3 SERP adjustment calculation are \$982,904. These amounts exclude any payments to  
4 former L&P executives and certain former Aquila executives.

5 **Q: How do you recommend these lump sum payments be recovered?**

6 A: Lump sum SERP payments made in 2009 should be amortized over a five-year period  
7 rather than be fully recognized in the test period. If the lump sum option had not been  
8 chosen, these participants would receive monthly annuity payments. The amortization  
9 merely spreads the payments over a period of time which more closely reflects annuity  
10 based payments. The amount of this amortization should be included in the cost of  
11 service since the difference between lump-sums and annuities is primarily timing.

12 **Q: Therefore, is there any justification for including only one of the options in**  
13 **normalized cost of service expense, such as Mr. Hyneman's recommendation to**  
14 **include only annuity payments?**

15 A: No, both forms of payment must be included. It is appropriate for the Company to  
16 include in its rates, expenses that accurately reflect the Company's costs going forward.  
17 By only including annuity payment costs, Staff's proposal would result in a under  
18 recovery.

19 **Q: Please explain why you believe SERP payments should not be allocated based on**  
20 **executive titles and 2005 allocation factors?**

21 A: It appears that Staff looked at the titles for the Aquila executive officers and reduced  
22 SERP payments to be charged to Missouri regulated operations based a 2005 percentage  
23 exclusion factor. There are two problems with this approach: 1) Titles do not necessarily

1 communicate job function or percent of time that an individual worked on Missouri  
2 regulated operations. 2) SERP is an accumulation of benefits over time, and job  
3 responsibilities change over time.

4 **Q: What were the amounts of SERP payments excluded due to the allocation by title?**

5 A: The SERP amount related to this issue during the test period that should be included is  
6 \$171,002. This amount excludes any payments to former L&P executives and certain  
7 other Aquila executives and also excludes a 20 percent reduction to adjust for SERP  
8 benefits that accumulated as a result of bonus and incentives not included in cost of  
9 service.

10 **Q: Why do you believe that the full SERP expense of two Aquila executives should be**  
11 **included in cost of service?**

12 A: Mr. Hyneman used one employee with over 22 years of service to determine what he  
13 perceived was a reasonable SERP payment. He set this amount at approximately \$50,000  
14 annually, yet he capped the recovery of a SERP payment to an employee with 38 years of  
15 service. SERP benefits increase with years of service, similar to pension benefits.

16 **Q: What was the total amount of SERP payments excluded due to the cap placed on the**  
17 **full recovery of SERP benefits for two former Aquila executives?**

18 A: The SERP amount related to this issue that should be included for GMO is \$50,782,  
19 before the 20 percent reduction to adjust for SERP benefits that accumulated as a result  
20 of bonus and incentives not included in cost of service. Using the Company's allocation  
21 factor the amounts were \$38,483 and \$12,299 for MPS and L&P, respectively.

22 **Q: Why do you believe that SERP expense for former Aquila executives should be**  
23 **allocated to L&P?**

1 A: Like MPS, L&P was a part of the Aquila organization and derived benefits from the  
2 employment of Aquila executives and therefore L&P ratepayers are responsible for a  
3 portion of their compensation and related benefits. Additionally, Staff has been the party  
4 insistent that SERP recovery be based on cash payments and not accrued SERP expense.  
5 Aquila/GMO has not been able to recover the SERP cost related to this service in the past  
6 and now requests recovery of the cash payments in this case and going forward.

7 **Q: What was the total amount of SERP payments excluded related to this issue?**

8 A: Using the schedule prepared by Staff, the amount is \$20,618.

9 **SEVERANCE COSTS**

10 **Q: Do you agree with Staff's adjustments E129.2 (MPS) and E135.1 (L&P) to remove**  
11 **severance costs from costs of service?**

12 A: No, I do not. Severance costs are an ongoing cost of providing service. Company  
13 management takes seriously its responsibility to ensure the Company has the human  
14 capital capable of delivering safe, reliable service at a reasonable cost. Severance is an  
15 ongoing cost to accomplish this.

16 **Q: Does GMO incur some level of severance costs annually?**

17 A: The Company generally incurs some amount of severance cost each year as it remains  
18 diligent in ensuring it has qualified, productive individuals performing the appropriate job  
19 function. Employees who are knowledgeable, skilled, and engaged are innovative and  
20 efficient, thus taking costs out of the business. This allows the Company to be more cost-  
21 effective in the long run and keep customers' rates as low as possible.

22 **Q: Are there other reasons why severance costs are a reasonable and necessary**  
23 **business expense?**



1 A: Yes. Not only do ongoing severance costs benefit the Company's customers by ensuring  
2 employees are engaged in helping customers, but such costs also shield the Company  
3 from potentially significant litigation expenses. Defending a meritless or frivolous labor  
4 or employment claim against the Company is expensive. Customers benefit from a  
5 company not expending dollars on legal costs and not having its employees distracted by  
6 litigation. It is for this reason that the payment of severance is a common business  
7 practice when an employee is terminated for something other than gross misconduct.

8 **Q: Would the Company over collect by including both severance and payroll costs in its**  
9 **cost of service?**

10 A: No, the Company typically fills open position as soon as it can locate a qualified and  
11 interested candidate. That being the case, in nearly all cases the position does not remain  
12 unfilled long enough for the Company to recover its severance cost through regulatory  
13 lag. If rates were set based on currently filled as well as unfilled positions, this might be  
14 true. However, Staff has taken the position to exclude unfilled positions, even if offers  
15 are extended and accepted, if the newly hired individual was not currently on the  
16 Company's premises and in its payroll system as an employee on the true-up date.

17 **Q: Please quantify the value of this issue in this case.**

18 A: The Company has included \$30,337 and \$6,646 of severance cost in this case,  
19 representing a 3-year average of such costs (2007-2009) for KCP&L GMO-MPS and  
20 KCP&L GMO-L&P, respectively. Staff has recommended no recovery.

21 **Q: Does that conclude your testimony?**

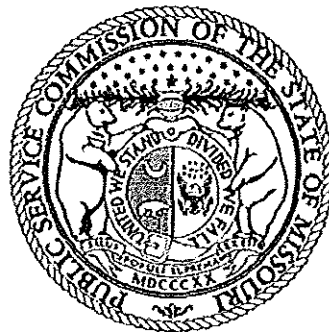
22 A: Yes, it does.



**MISSOURI PUBLIC SERVICE COMMISSION**

**STAFF REPORT**

**REVENUE REQUIREMENT  
COST OF SERVICE**



**KANSAS CITY POWER & LIGHT COMPANY  
Great Plains Energy, Inc.**

**CASE NO. ER-2012-0174**

*Jefferson City, Missouri  
August 2, 2012*

**\*\* Denotes Highly Confidential Information \*\***

**NP**

1 Stipulation and Agreement in future rate cases, such as the current rate case. For the purposes of  
2 this rate case, the Staff has decided to continue with the treatment outlined in the Stipulation and  
3 Agreement for OPEB and will decide in KCPL's next rate case whether or not changes or  
4 adjustments to this methodology are appropriate.

5 *Staff Expert/Witness: Charles R. Hyneman*

#### 6 **7. Supplemental Executive Retirement Plan (SERP) Expense**

7 Included in Staff's revenue requirement recommendation is an annualized level of actual  
8 monthly-recurring SERP payments made by KCPL to its former executives and other highly-  
9 compensated former employees. SERPs are non-qualified retirement plans for officers and other  
10 highly-compensated employees that provide pension benefits that these individuals would have  
11 received under the company's other retirement plans, except for compensation and benefit limits  
12 imposed by the Internal Revenue Service (IRS). These supplemental pension benefits paid to  
13 retired former officers and executives are in addition to the cost of pension benefits paid by  
14 KCPL under its all-employee FAS 87 pension plan. SERP pension benefits generally exceed  
15 various limits imposed on retirement programs by the IRS and therefore are referred to as "non-  
16 qualified" plans. SERP benefits are not externally funded by KCPL, and the amounts included  
17 by the Staff in cost of service are based upon actual cash SERP payouts to covered employees.

18 For the first quarter of 2012, KCPL's monthly cash SERP annuity payments were  
19 \$15,651. The Staff annualized this amount to \$187,812 and multiplied this annualized amount  
20 by the KCPL allocation factor of 69.1% for a net KCPL SERP amount of \$129,778 which is  
21 included in Staff's revenue requirement recommendation as adjustment E-209 to Account 926,  
22 Employee Benefits.

23 *Staff Expert/Witness: Charles R. Hyneman*

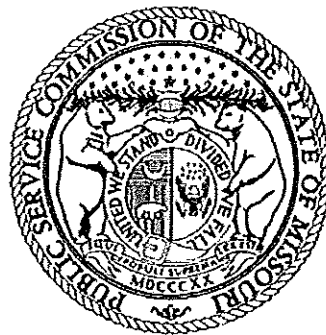
#### 24 **8. Talent Assessment Amortization**

25 In Case No. ER-2007-0291, KCPL proposed the recovery in rates of what it referred to as  
26 "Talent Assessment" or "Skill Set Realignment" costs. These costs were primarily severance  
27 payments to either employees whose employment was terminated by KCPL or employees who  
28 elected to leave KCPL. The total cost of the severance program, according to KCPL, was  
29 approximately \$9.6 million for the termination of 119 KCPL employees. The Missouri

MISSOURI PUBLIC SERVICE COMMISSION

STAFF REPORT

REVENUE REQUIREMENT  
COST OF SERVICE



KANSAS CITY POWER & LIGHT COMPANY

CASE NO. ER-2014-0370

*Jefferson City, Missouri  
April 2, 2015*

**\*\* Denotes Highly Confidential Information \*\***

**NP**

1 Staff's OPEB adjustment to KCPL Account 926, Employee Benefits annualizes the level  
2 of OPEB expense determined by KCPL's actuaries using the FAS 106 accounting method, with  
3 the exception of KCPL's portion of Wolf Creek OPEB expense, calculated as the 12 months  
4 ending December 31, 2014 actual payments.

5 Beginning May 4, 2011, KCPL initiated a new tracker for OPEB costs which the  
6 Commission authorized in Case No. ER-2010-0355. What is tracked are the differences between  
7 the current ongoing level of OPEB expense funded by KCPL in an external trust and the dollar  
8 amount of OPEB expense reflected in rates in each case. The unamortized balance of this tracker  
9 will be amortized over five years in each successive rate case, and either be added to or  
10 subtracted from the level of OPEB expense as determined by KCPL's actuaries. As with other  
11 rate base prepaid pension and other pension assets, it is anticipated that the OPEB tracker  
12 liability will be updated through the May 31, 2015 true-up period.

13 Ongoing OPEB expense and the rate base portion of the OPEB tracker mechanism are  
14 included in Staff Adjustments E-205.5, E-205.6, and E-205.7 to the Income Statement –  
15 Schedule 9, and Rate Base – Schedule 2.

16 *Staff Expert/Witness: Keith Majors*

#### 17 **7. Supplemental Executive Retirement Plan (SERP) Expense**

18 Included in Staff's revenue requirement recommendation is an annualized level of actual  
19 monthly-recurring SERP payments KCPL made to its former executives and other highly  
20 compensated former employees. SERPs are non-qualified retirement plans for officers and other  
21 highly-compensated employees that provide pension benefits that these individuals would have  
22 received under other company retirement plans, except for compensation and benefit limits  
23 imposed by the Internal Revenue Service (IRS). These supplemental pension benefits paid to  
24 retired former officers and executives are in addition to the cost of pension benefits KCPL pays  
25 under its all-employee FAS 87 pension plan. SERP pension benefits generally exceed various  
26 limits imposed on retirement programs by the IRS and therefore are referred to as "non-  
27 qualified" plans. SERP benefits are not externally funded by KCPL, and the amounts Staff  
28 included in is cost of service of KCPL are based upon actual cash SERP payouts to covered  
29 employees.

1 SERP payments consist of monthly annuity payments and periodic lump-sum  
2 distributions. Lump-sum payments can be significant and are often difficult to predict. As  
3 opposed to including a normalized amount of actual lump-sum payments, KCPL used a  
4 conversion factor of 14.3 to convert prior lump-sum payments to an amount that approximates  
5 the equivalent annuity payments to the qualifying employees as if that lump-sum payment option  
6 were not elected. Staff utilized this factor for the calculation of a normalized level of converted  
7 lump-sum payments.

8 Staff recommends that a three year average of monthly annuity payments, and a three  
9 year average of converted lump-sum payments, be used in this rate case to determine allowable  
10 SERP expense in rates. This approach is reflected in Staff's revenue requirement  
11 recommendation as Adjustment E-204.8 to Account 926, Employee Benefits.

12 *Staff Expert/Witness: Keith Majors*

#### 13 **8. Short Term Annual Incentive Compensation**

14 KCPL has two short-term annual incentive compensation plans for executive and  
15 management employees. These plans are designed to grant cash awards of various amounts  
16 calculated based upon designated annual metrics. Incentive compensation accrues over a  
17 calendar year and is paid out in the first quarter of the following calendar year. The two  
18 incentive compensation plans are 1) the Value-Link Plan, reserved for management-level KCPL  
19 employees; and 2) the Annual Executive Incentive Plan, reserved for senior management-level  
20 KCPL employees.

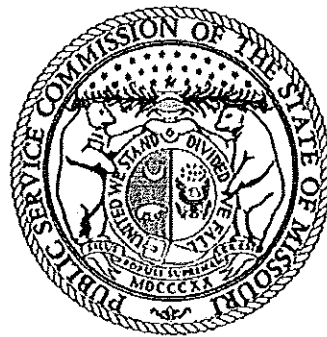
21 The incentive plans all have benchmarks that identify targets that KCPL employees are  
22 expected to achieve before any cash payouts are awarded. These targets are established each  
23 year of the incentive plan and communicated to the employees early enough so that the  
24 employees have sufficient opportunity to reasonably achieve the benchmarks.

25 Staff removed test year payouts for the Annual Executive Incentive Plan and 58.1% of  
26 the Value-Link Plan from the test year incentive compensation expense, as those payouts were  
27 awarded based upon attainment of certain financial metrics, i.e., Earnings per Share (EPS). The  
28 Commission has historically disallowed the awarding of incentive compensation tied to the  
29 utility achieving certain corporate financial goals on the basis that these goals provide no

**MISSOURI PUBLIC SERVICE COMMISSION**

**STAFF REPORT**

**REVENUE REQUIREMENT  
COST OF SERVICE**



**KANSAS CITY POWER & LIGHT COMPANY**

**CASE NO. ER-2016-0285**

*Jefferson City, Missouri*

*November 30, 2016*

**\*\* Denotes Highly Confidential Information \*\***

**NP**



1 Accordingly, the Wolf Creek OPEB costs are not included in the FAS 106 tracking mechanism,  
2 but are included separately in the cost of service on a pay-as-you-go basis.

3 Staff's OPEB adjustment to KCPL Account 926, Employee Benefits, annualizes the level  
4 of OPEB expense determined by KCPL's actuaries using the FAS 106 accounting method, with  
5 the exception of KCPL's portion of Wolf Creek OPEB expense, calculated as the 12 months  
6 ending December 31, 2014 actual payments.

7 Beginning May 4, 2011, KCPL initiated a new tracking mechanism for OPEBs, which  
8 the Commission authorized in Case No. ER-2010-0355. Under this mechanism, what is tracked  
9 are the differences between the current ongoing level of OPEB expense funded by KCPL in an  
10 external trust and the dollar amount of OPEB expense reflected in rates in each case. The  
11 unamortized balance of this tracker will be amortized over five years in each successive rate  
12 case, and either will be added to or subtracted from the level of OPEB expense as determined by  
13 KCPL's actuaries. The cumulative tracker balance as of June 30, 2016 is a regulatory liability;  
14 that is, the amount collected in rates has been more than the incurred FAS 106 OPEB expense.  
15 As with other rate base, prepaid pension and other pension assets, it is anticipated that the OPEB  
16 tracker liability will be updated through the December 31, 2016 true-up period.

17 Ongoing OPEBs expense and the rate base portion of the OPEB tracker mechanism are  
18 included in Staff Adjustments E-211.2 in the Income Statement – Schedule 10, and Rate Base –  
19 Schedule 2.

20 *Staff Expert/Witness: Keith Majors*

#### 21 **7. Supplemental Executive Retirement Plan ("SERP") Expense**

22 Included in Staff's revenue requirement recommendation is an annualized level of actual  
23 monthly-recurring SERP payments KCPL made to its former executives and other highly  
24 compensated former employees. SERPs are "non-qualified" retirement plans for officers and  
25 other highly-compensated employees that provide pension benefits that these individuals would  
26 have received under other company retirement plans, but for compensation and benefit limits  
27 imposed by the Internal Revenue Service ("IRS"). These supplemental pension benefits paid to  
28 retired former officers and executives are in addition to the cost of pension benefits KCPL pays  
29 under its FAS 87 pension plan. SERP pension benefits generally exceed various limits imposed  
30 on retirement programs by the IRS and therefore are referred to as "non-qualified" plans. SERP

1 benefits are not externally funded to a trust by KCPL, and the amounts Staff included in is cost  
2 of service of KCPL are based upon actual cash SERP payouts to covered employees.

3 SERP payments can consist of either monthly annuity payments or periodic lump-sum  
4 distributions. Lump-sum payments can be significant and the timing of these payments are often  
5 difficult to predict. As opposed to including a normalized amount of actual lump-sum payments,  
6 KCPL used a conversion factor of 14.3 to convert prior lump-sum payments to an amount that  
7 approximates the equivalent annuity payments to the qualifying employees as if that lump-sum  
8 payment option were not elected. Staff utilized this factor for the calculation of a normalized  
9 level of converted lump-sum payments.

10 KCPL and GMO currently charge a portion of SERP costs to plant accounts, also known  
11 as capitalizing these costs. In the response to Staff Data Request 229.1, KCPL identified that a  
12 portion of SERP has been capitalized for "a number of years" and there has been no change in  
13 that policy. The cumulative portion of capitalized SERP is included in the plant in service  
14 balances in Staff Accounting Schedule 3 as a portion of construction costs. Because KCPL  
15 capitalizes SERP costs, Staff has included a reduction in SERP expense commensurate with the  
16 capitalization rate used in Staff's payroll adjustment in this case.

17 Staff recommends that a three year average of monthly annuity payments, and a three  
18 year average of converted lump-sum payments, be used in this rate case to determine allowable  
19 SERP expense in rates. This approach is reflected in Staff Accounting Schedule 10, Adjustment  
20 E-210.3.

21 *Staff Expert/Witness: Keith Majors*

## 22 **8. Severance Expenses**

23 Staff recommends removal of employee severance payments incurred during the test  
24 year. Severance payments are cash payments to former employees paid for various reasons.  
25 Severance agreements typically include commitments from the former employee to not pursue  
26 litigation against the company and its officers.

27 Severance payments are non-recurring in regards to the specific employee. Because of  
28 the unique nature of cost of service ratemaking, utilities are able to recover severance payments  
29 through regulatory lag. Between the time the employee is terminated and rates are changed in

1 the next rate case, KCPL collects both the salary and wages of the terminated employee and  
2 benefit costs. These amounts can accumulate to more than the severance paid.

3 The adjustments for the removal of severance expenses are in Staff Accounting  
4 Schedule 10, Adjustments E-E-119.5 and E-201.7.

5 *Staff Expert/Witness: Keith Majors*

6 **9. Short Term Annual Incentive Compensation**

7 KCPL has two short-term annual incentive compensation plans for executive and  
8 management employees. These plans are designed to grant cash awards of various amounts that  
9 are calculated based upon designated annual metrics. Incentive compensation accrues over a  
10 calendar year and is paid out in the first quarter of the following calendar year. The two  
11 incentive compensation plans are 1) the Value-Link Plan, reserved for non-union, non-executive  
12 KCPL employees; and 2) the Annual Executive Incentive Plan, reserved for senior management-  
13 level KCPL employees.

14 The incentive plans all have benchmarks that identify targets that KCPL employees are  
15 expected to achieve before any cash payouts are awarded. These targets are established each  
16 year of the incentive plan and communicated to the employees early enough so that the  
17 employees have sufficient opportunity to reasonably achieve the benchmarks.

18 Staff has historically disallowed payouts from KCPL's Value-Link incentive  
19 compensation plan related to attaining certain financial metrics, such as Earnings per Share  
20 ("EPS"), on the basis that these metrics are to benefit shareholders and not ratepayers. In  
21 addition, the Commission has historically disallowed the awarding of incentive compensation  
22 tied to the utility achieving certain corporate financial goals on the basis that these goals provide  
23 no direct benefit to Missouri ratepayers. *See specifically Re KCPL*, Case Nos. ER-2006-0314,  
24 15 Mo.P.S.C.3d 138, 171-72 (2006) and *Re KCPL*, ER-2007-0291, pp. 49-51 (2007).

25 The Value-Link plan has listed an EPS component as a metric for incentive payouts  
26 during the plan years 2012 through 2015. However, the Value-Link plan for the calendar year  
27 2016 does not have an EPS component, which makes historical plan years less relevant to future  
28 incentive compensation awards. To normalize incentive compensation expense related to the  
29 Value-Link plan, Staff averaged three of the four most recent plan years (2012, 2014, and 2015)  
30 to include in KCPL's cost of service. During the plan years included in Staff's average,

