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LACLEDE GAS COMPANY  
MISSOURI GAS ENERGY

GR-2017-0215  
GR-2017-0216

SURREBUTTAL TESTIMONY

OF

JAMES A. FALLERT

NOVEMBER 2017

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**SURREBUTTAL TESTIMONY OF JAMES A. FALLERT**

1 Q. PLEASE STATE YOUR NAME, BUSINESS AFFILIATION AND BUSINESS  
2 ADDRESS.

3 A. My name is James A. Fallert. I am doing business as James Fallert Consultant LLC and  
4 my business address is 3507 Burgundy Way Dr., St. Louis, Missouri 63129.

5 Q. ARE YOU THE SAME JAMES A. FALLERT WHO SUBMITTED REBUTTAL  
6 TESTIMONY IN THIS CASE?

7 A. Yes.

8 I. **PURPOSE OF TESTIMONY**

9 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

10 A. The purpose of my testimony is to respond to the rebuttal testimony of Staff Witness  
11 Matthew Young regarding Staff's adjustment reducing Laclede Gas Company's prepaid  
12 pension asset in rate base.

13 II. **NOMENCLATURE**

14 Q. PLEASE DEFINE THE TERMS YOU WILL USE IN THIS TESTIMONY.

15 A. Throughout this testimony, I will refer to FAS 87 and FAS 88. These are financial  
16 standards issued by the Financial Accounting Standards Board (FASB) in 1985. The  
17 official titles of these standards are Statement of Financial Accounting Standards No. 87,  
18 Employers' Accounting for Pensions, and Statement of Accounting Standards No. 88,  
19 Employers' Accounting for Settlements and Curtailments of Defined Benefit Pension  
20 Plans and for Termination Benefits.

21 Q. ARE THESE STANDARDS STILL IN EFFECT?

1 A. In 2009, the FASB completed a codification project in which existing standards were  
2 reissued under a new codification system. At that time, FAS 87 and FAS 88 were  
3 combined as part of Accounting Standard Codification Topic No. 715, Compensation –  
4 Retirement Benefits, Sub-Topic 30 – Defined Benefit Plans - Pension. I will refer to FAS  
5 87 and FAS 88 in this testimony since these terms were in effect during the applicable  
6 periods and because I believe these terms are commonly used in regulatory settings.

7 Q. **HAVE YOU REFERENCED ANY OTHER FASB STANDARDS EFFECTED BY**  
8 **THE NEW CODIFICATION SYSTEM?**

9 A. Yes. I also discuss Statement of Financial Accounting Standards No. 71, Accounting for  
10 the Effects of Certain Types of Regulation. This standard has been included in the new  
11 codification system under Topic 980 – Regulated Operations. I will refer to this standard  
12 as FAS 71 herein. Additionally, this testimony mentions Statement of Financial  
13 Accounting Standards No. 106, Employers' Accounting for Postretirement Benefits  
14 Other Than Pensions. This standard has been included in the new codification system  
15 under Topic 715 Compensation – Retirement Benefits, Sub-Topic 60 – Defined Benefit  
16 Plans – Other Post Retirement. I will refer to this standard as FAS 106.

17 **III. RESPONSE TO REBUTTAL TESTIMONY OF STAFF WITNESS YOUNG**

18 Q. **WHAT POSITION HAS STAFF TAKEN REGARDING THE PREPAID**  
19 **PENSION ASSET?**

20 A. Staff contends that prior to 1994, Laclede's rates were based on contributions to the  
21 pension trusts made under the ERISA regulations (Young Rebuttal, page 9, line 12).  
22 Staff further excludes the effect of entries made pursuant to FAS 88 until 1996. The

1 impact of these positions is to reduce the prepaid pension asset included in rate base by  
2 \$28,788,411.

3 **Q. WHAT REASON DID STAFF PROVIDE FOR THIS ASSERTION?**

4 A. Staff states: “The 1994 (FAS 87) and 1996 (FAS 88) changes in ratemaking methodology  
5 were the result of the passage of House Bill 1405 in 1994, which dictated that the accrued  
6 FAS 106 (accounting guidance for OPEB expense) shall be used for ratemaking, which  
7 led in turn to the use of FAS 87 and FAS 88 for pension ratemaking to maintain  
8 consistency in how rates were set for pensions and OPEBs.” (page 10, line 20).

9 **Q. DOES THIS REASON JUSTIFY STAFF’S POSITION?**

10 A. No. Staff may have at times considered or proposed using a contribution basis for  
11 pension ratemaking on one occasion prior to 1994, but there is no evidence in the record  
12 that the Commission ever approved such an approach. Staff’s reasoning describes an  
13 evolution in its thinking, not a change in the basis for setting rates. Furthermore, it is  
14 illogical that a change in ratemaking caused by passage of a bill in 1994 would apply to  
15 FAS 87 in 1994 but wouldn’t apply to FAS 88 until 1996, especially when these two  
16 standards are so intrinsically linked.

17 **Q. STAFF NOTES THAT CASH CONTRIBUTIONS WERE USED FOR RATES  
18 BEGINNING IN 2002 (PAGE 10, LINE 3). IS THIS RELEVANT TO THE  
19 PERIODS IN DISPUTE?**

20 A. No. The parties agree on pension asset balances accrued after 1996. The key difference  
21 between pre-1996 and 2002 is that when a contribution basis was implemented in 2002,  
22 the use of that basis was extensively discussed and agreed upon in the Stipulation &

1 Agreement in Case No. GR-2002-356. No such evidence exists to support Staff's claim  
2 that a contribution basis was used prior to 1996.

3 **Q. HAS STAFF PROVIDED ANY EVIDENCE IN THE RECORD TO SUPPORT ITS**  
4 **POSITION?**

5 A. Staff cites two references to its own testimony in GR-96-193 to support its position. It is  
6 telling that Staff can only point to itself to revise history, and can't point to any  
7 Commission Order or Stipulation & Agreement that supports its position.

8 **Q. IS THERE ANY OTHER STAFF TESTIMONY IN THE RECORD THAT**  
9 **WOULD BE MORE PERTINENT THAN CASE NO. GR-96-193?**

10 A. Yes. I have reviewed Staff testimony in the three rate cases that actually occurred during  
11 the period during which the disputed balances were accrued (Case Nos. GR-90-120, GR-  
12 92-165, and GR-94-220).

13 **Q. WHAT WAS STAFF'S POSITION IN CASE NO. GR-90-120?**

14 A. The Staff's position on pension expense in that case was covered in the direct testimony  
15 of Staff Witness Stephen M. Rackers beginning at page 6, line 22. The first question and  
16 answer in that testimony were as follows:

17 "Q. Has the Staff utilized the Statement of Financial Accounting  
18 Standards No. 87 (FAS 87) in its determination of pension  
19 expense?  
20

21 A. Yes, with regard to funded pensions...."  
22

23 It should be noted that the balances in dispute in this case relate to funded pensions. I  
24 found no reference in Mr. Rackers' testimony to basing ratemaking for funded pensions  
25 on contributions, nor was there any indication that his proposal to use FAS 87 was a  
26 change from a previous contribution basis. There was no reference in the Stipulation &

1 Agreement to any change to a contribution basis. It can only be inferred that ratemaking  
2 for pensions was based on pension accruals under GAAP as required under FAS 87 and  
3 FAS 88 both before and after Case No. GR-90-120.

4 **Q. WHAT WAS STAFF'S POSITION IN CASE NO. GR-92-165?**

5 A. Mr. Rackers was again the Staff witness covering pension expense. In this case Staff did  
6 propose basing rates on contributions (page 5, line 29). Additionally, later in Mr.  
7 Rackers' testimony, Staff outlined the accounting requirements necessary to implement  
8 the proposed change (page 8, line 7). The key question and answer were as follows:

9 "Q. Explain the Staff's recommendation for pensions.

10  
11 A. **Currently the Company is required by Generally Accepted**  
12 **Accounting Principles to record pension expense according to FAS 87**  
13 **and 88.** However, under FAS 71 Laclede may under certain conditions  
14 record a regulatory asset or liability on its balance sheet for the difference  
15 between the amount determined under FAS 87 and 88 and the amount  
16 determined through ratemaking. A Commission Order in this case  
17 establishing rates based on the minimum ERISA contribution and actual  
18 payments along with a statement regarding probable recovery of any  
19 resulting regulatory asset or liability should allow the Company to  
20 implement FAS 71 to book pension expense in accordance with the  
21 ratemaking treatment specified by the Commission." (Emphasis added.)  
22

23 A similar discussion was included in Laclede's direct case (direct testimony of Mark D.  
24 Waltermire, beginning at page 3, line 1).

25 **Q. PLEASE COMMENT.**

26 A. It is apparent that there was a general understanding that any change in ratemaking for  
27 pensions from a GAAP expense basis to a contribution basis would require specific  
28 authorization in a Commission Order.

29 **Q. WAS ANY SUCH ORDER ISSUED IN CASE NO. GR-92-165?**

1 A. No. The Stipulation & Agreement and Report & Order are silent in regard to pensions.  
2 One can only conclude in the absence of such an Order that ratemaking for pensions  
3 remained on a GAAP (i.e. FAS 87 and FAS 88) basis.

4 **Q. WHAT WAS STAFF'S POSITION IN CASE NO. GR-94-220?**

5 A. Staff initially advocated using a contribution basis for setting rates but also indicated that  
6 passage of HB 1405 would cause it to change its position to use of FAS 87 and FAS 88  
7 for ratemaking. Staff extensively discussed the changes to assumptions for FAS 87  
8 calculations that it would advocate in the event that HB 1405 did pass. HB 1405 did  
9 indeed pass, the case was settled, and the Stipulation & Agreement included some of the  
10 changes to FAS 87 assumptions advocated by Staff.

11 **Q. WHAT RELEVANCE DOES STAFF'S TESTIMONY IN CASE NO. GR-94-220**  
12 **HAVE TO THE CURRENT DISPUTE?**

13 A. It is worth noting that the first reference to FAS 87 in a Commission Order was in this  
14 case, and was necessitated by the above-referenced assumption changes. However, the  
15 most relevant portion of Staff's testimony relates to FAS 88. The Staff Witness covering  
16 pensions in this case was John M. Boczkiewicz. The following questions and answers  
17 commence at page 17, line 9 of Mr. Boczkiewicz' direct testimony:

18 "Q. How has Laclede normalized FAS 88 gains in its case?  
19

20 A. Laclede has employed a "three year average", using the actual FAS 88  
21 gains from fiscal 1992 and 1993, and the expected level of gains from  
22 fiscal 1994.  
23

24 Q. Why is it appropriate to use an average to normalize FAS 88 gains?  
25

26 A. FAS 88 gains are subject to wide fluctuations, thus an averaging  
27 technique provides a more representative year-to-year level.  
28

29 Q. Does Staff agree with the average used by Laclede?



1  
2 A. No. The Company's average assumes no lump-sum benefits will be  
3 paid during fiscal 1994. Since the 1994 fiscal year is not yet complete, the  
4 Company does not yet know whether any lump-sum benefits will be paid  
5 out. The Staff believes an average, using actual payments for the last  
6 three years, would be more appropriate."  
7

8 It is apparent that there was no dispute regarding the use of FAS 88 in ratemaking. The  
9 only dispute in Case No. GR-94-220 regarded the methodology for normalization of FAS  
10 88 expense. This certainly obviates Staff's contention that FAS 88 was not included in  
11 ratemaking until the effective date of rates in the subsequent case (Case No. GR-96-193).

12 **Q. FAS 88 WAS NOT MENTIONED IN THE STIPULATION & AGREEMENT IN**  
13 **CASE NO. GR-94-220. WHY WAS THAT THE CASE?**

14 A. Unlike FAS 87, there was no change to the basic assumptions for FAS 88 in GR-94-220.  
15 Therefore, it was unnecessary to mention FAS 88 in the Stipulation & Agreement. FAS  
16 88 was first referenced in the Stipulation & Agreement in the next case (GR-96-193)  
17 because some of the basic assumptions related to FAS 88 were changed in that case,  
18 necessitating Commission approval. Specifically, the Commission authorized a change  
19 in the recognition threshold for booking the accounting impact of FAS 88 events from the  
20 minimum required by GAAP (lump sums exceed 100% of the plan's Service and Interest  
21 Cost before any FAS 88 costs/credits are recognized) to recognition on a "first dollar"  
22 basis. This change was made to address the "lumpiness" of FAS 88 recognition.

23 **Q. WHAT WOULD BE THE IMPACT OF THE POSITION ADVOCATED BY**  
24 **STAFF IN THIS CASE?**

25 A. Staff's position would change the outcome of these past cases by retroactively inserting  
26 language that was not in the applicable Report & Orders and Stipulation & Agreements.

1 **Q. STAFF NOTES THAT IT HAS CONSISTENTLY MADE THIS ADJUSTMENT,**  
2 **AND “THAT LAC HAS NOT ONCE WRITTEN RESPONSIVE TESTIMONY**  
3 **REGARDING STAFF’S ADJUSTMENT.” PLEASE COMMENT.**

4 A. Laclede has consistently applied its view of this issue, and Staff has been well aware of  
5 Laclede’s position over the years. This issue has repeatedly been settled as part of a  
6 “Black Box Settlement”, so it has been unnecessary for Laclede to respond until now.

7 **Q. IN ITS REBUTTAL TESTIMONY ON PAGE 11, LINE 7, STAFF CLAIMS THAT**  
8 **“STAFF’S ADJUSTMENT HAS BEEN UNOPPOSED OVER THE COURSE OF**  
9 **20 YEARS”. IS THIS CORRECT?**

10 A. Absolutely not. Changes in pension accounting have always been memorialized in  
11 language adopted in Stipulations and there is no reason to believe that the changes  
12 contemplated by Staff wouldn’t have also been included in an Agreement. As mentioned  
13 above, this issue has been included in “Black Box Settlements” up until now

14 **Q. PLEASE CONTINUE.**

15 A. Staff’s claims as discussed above could just as easily be applied to the Company’s  
16 position. However, Laclede has no need to make such claims because the record clearly  
17 indicates that the ratemaking treatment for pension expense was based on GAAP expense  
18 accruals pursuant to FAS 87 and FAS 88 throughout the period in question.

19 **Q. IN ITS REBUTTAL TESTIMONY ON PAGE 11, LINE 5, STAFF REFERENCES**  
20 **ITS RECOMMENDATION IN DIRECT TESTIMONY THAT LACLEDE**  
21 **“RECLASSIFY THE AMOUNT OF ITS REGULATORY ASSET RELATED TO**  
22 **DEFERRED FAS 87 COSTS PRIOR TO SEPTEMBER 1, 1994, AND DEFERRED**

1 **FAS 88 COSTS PRIOR TO SEPTEMBER 1, 1996.” IS THIS HOW THE**  
2 **ACCOUNTING RESULTING FROM STAFF’S POSITION WOULD WORK?**

3 A. No. The prepaid pension asset recorded pursuant to FAS 87 and FAS 88 would remain  
4 on the books. However, as explained above in the quote from the testimony of Staff  
5 witness Rackers in Case No GR-92-165, the Staff’s position may well result in recording  
6 of a regulatory liability pursuant to FAS 71. If the Commission does not agree that  
7 GAAP accounting should prevail, Laclede could suffer a \$28.8 million write-off due to  
8 the resulting regulatory entries.

9 **Q. HAVE THE ACCOUNTING IMPLICATIONS OF STAFF’S POSITION IN THIS**  
10 **CASE BEEN CONSIDERED BY THE COMMISSION IN THE PAST?**

11 A. Yes. Paragraph 5 of the Stipulation & Agreement in Case No. GR-94-220 stated:

12 “The parties agree that in setting rates for Laclede and in determining  
13 Laclede’s funding obligation for FAS 87 and 106 expenses, the  
14 Commission shall not consider the following items existing on the books  
15 of Laclede as of the effective date of the tariff sheets authorized in this  
16 case: A. any regulatory liability balances related to FAS 87; and B. any  
17 OPEB liability previously accrued by Laclede.”

18  
19 The very regulatory liability that could be created by Staff’s position in this case was  
20 specifically excluded by the Commission in Case No. GR-94-220.

21 **IV. SUMMARY**

22 **Q. PLEASE SUMMARIZE YOUR SURREBUTTAL TESTIMONY.**

23 A. Staff contends that ratemaking for pensions prior to 1994 was based on pension  
24 contributions rather than the normal ratemaking practice using GAAP accounting. Staff  
25 further contends that pension ratemaking for the period between 1994 and 1996 was  
26 based only partially on GAAP accounting (FAS 87 but not FAS 88). These claims are  
27 based solely on Staff’s internal thinking and subsequent assertions. There is nothing in

1 the record to indicate that the Commission ever implemented ratemaking on a  
2 contribution basis during the periods in question. There is no evidence that would justify  
3 a retroactive implementation of ratemaking on a contribution basis for the period in  
4 question when the Commissions of that era clearly did not do so.

5 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

6 **A** Yes.

