

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4
5
6 TRANSCRIPT OF PROCEEDINGS
7 Oral Arguments
8 February 13, 2003
9 Jefferson City, Missouri
10 Volume 8
11
12 In the Matter of the Tariff Filing)
13 of Laclede Gas Company to Implement) Case No. GT-2003-0117
14 an Experimental Low-Income Assistance) Program Called Catch-Up/Keep-Up.)
15
16
17 VICKY RUTH, Presiding,
18 SENIOR REGULATORY LAW JUDGE.
19
20 SHEILA LUMPE,
21 STEVE GAW,
22 BRYAN FORBIS,
23 COMMISSIONERS.
24
25 REPORTED BY:
26 KELLENE K. FEDDERSEN, CSR, RPR, CCR
27 ASSOCIATED COURT REPORTERS
28
29 ASSOCIATED COURT REPORTERS
30 JEFFERSON CITY - COLUMBIA - ROLLA
31 (888) 636-7551
32 831

1 APPEARANCES:

2 JAMES C. SWEARENGEN, Attorney at Law
3 Brydon, Swearngen & England, P.C.
312 East Capitol
P.O. Box 456
4 Jefferson City, Missouri 65102-0456
(573) 635-7166

5
FOR: Laclede Gas Company.

6
MICHAEL C. PENDERGAST, Attorney at Law
7 720 Olive Street
St. Louis, Missouri 63101
8 (314) 342-0532

9 FOR: Laclede Gas Company.

10 RONALD MOLTENI, Assistant Attorney General
P.O. Box 899
11 Supreme Court Building
Jefferson City, Missouri 65102
12 (573) 751-3321

13 FOR: State of Missouri.

14 DOUGLAS E. MICHEEL, Senior Public Counsel
P.O. Box 7800
15 Jefferson City, Missouri 65102-780
(573) 751-4857

16
FOR: Office of the Public Counsel
17 and the Public.

18 THOMAS R. SCHWARZ, JR., Deputy General Counsel
LERA L. SHEMWELL, Senior Counsel
19 P.O. Box 360
Jefferson City, Missouri 65102
20 (573) 751-3234

21 FOR: Staff of the Missouri Public
22 Service Commission.

23

24

25

1 P R O C E E D I N G S

2 JUDGE RUTH: Good afternoon, my name is Vicky
3 Ruth, and I'm the Regulatory Law Judge assigned to this
4 case. Today is Thursday, February 13th, 2003, and we are
5 here for a hearing in Case No. GT-2003-0117, in the matter
6 of the tariff filing of Laclede Gas Company to implement an
7 experimental low-income assistance program called
8 Catch-Up/Keep-Up.

9 Today's oral arguments were actually scheduled
10 to allow the parties to give a very brief recap of their
11 argument regarding Laclede's motion for rehearing and to
12 allow the Commissioners the opportunity to ask any questions
13 they might have at this time. Let's start with entries of
14 appearance.

15 Laclede?

16 MR. SWEARENGEN: Thank you, your Honor. Let
17 the record show the appearance of James Swearengen and
18 Michael Pendergast on behalf of Laclede Gas Company.

19 JUDGE RUTH: Staff?

20 MS. SHEMWELL: Good afternoon. Lera Shemwell
21 and Thomas R. Schwarz representing the Staff of the Missouri
22 Public Service Commission, Post Office Box 360, Jefferson
23 City, Missouri 65102.

24 JUDGE RUTH: Public Counsel?

25 MR. MICHEEL: Douglas E. Micheel, appearing on

ASSOCIATED COURT REPORTERS
JEFFERSON CITY - COLUMBIA - ROLLA
(888) 636-7551
833

1 behalf of the Office of the Public Counsel.

2 JUDGE RUTH: DNR?

3 MR. MOLTENI: Ron Molteni, Assistant Attorney
4 General on behalf of DNR.

5 JUDGE RUTH: Thank you.

6 When we do our oral arguments, we're going to
7 start with initial arguments from Laclede, then move to
8 Staff, Public Counsel and DNR. After each party presents
9 its initial arguments, there may be questions from the
10 Bench, and there might even be interruptions during your
11 oral argument from the Bench.

12 After the questions from the Bench, the
13 parties will have the opportunity to do reply comments in
14 lieu of any type of closing argument. And I don't
15 anticipate the need for any additional Briefs or recap of
16 our arguments, but if that's necessary, we'll discuss it at
17 the end of the hearing.

18 Let's go ahead and begin with Laclede. And
19 could I ask you to come up to the podium, please, and be
20 sure to use the microphone.

21 Could you make sure your microphone is going
22 to pick up? Thank you.

23 MR. SWEARENGEN: How's that? Is that right?

24 JUDGE RUTH: Please proceed.

25 MR. SWEARENGEN: My name is Jim Swearengen.

1 I'm appearing before you this afternoon on behalf of Laclede
2 Gas Company in the Catch-Up/Keep-Up case, which I think
3 you-all are familiar with, and it seems to have taken on a
4 life of its own.

5 The majority of the Commission has indicated
6 by its January 16, 2003 Report and Order which it issued in
7 this case that the program that Laclede had initially
8 proposed should be rejected, in part because of concerns as
9 to whether or not the Commission actually has the legal
10 authority to approve such a program.

11 However, there does appear to be some
12 uncertainty on the part of the Commission in this regard, as
13 questions appear to remain on this issue of the Commission's
14 legal authority, and I think as you are aware, since the
15 time of your January 16th decision, Laclede has filed its
16 motion for reconsideration and, in essence, has put before
17 you the same program but one based on a reduced funding
18 level.

19 Specifically Laclede now requests that it
20 be permitted to implement its program on an experimental
21 basis but at a \$3 million level as opposed to the \$6 million
22 level which was contained in its original filing. And this
23 \$3 million level or amount has its origins in the suggestion
24 that was made by the Office of Public Counsel during the
25 earlier hearings and in testimony, at which time the Public

1 Counsel suggested that if the Commission was inclined to go
2 ahead and implement the program, that it should be done so
3 at a lower level, the \$3 million.

4 Keep in mind that Laclede continues to believe
5 that the program is critically needed and, further, with
6 this reduced funding level, it's our belief that
7 nonparticipating customers will hardly be impacted. We're
8 talking about approximately 31 cents per month in terms of
9 cost to them. The impact would be even less if the program
10 has a positive effect on Laclede's bad debt and related
11 expenses, and those benefits would be reflected later on
12 down the road.

13 It's also Laclede's view that the reduced
14 funding level would virtually eliminate the possibility that
15 Laclede would receive any material financial benefit. In
16 fact, all of the pipeline discounts will continue to flow to
17 Laclede's customers, either through the PGA as formulated or
18 through program benefits.

19 Having provided this background to you, I will
20 attempt to briefly address this afternoon what I understand
21 to be the legal issues that underlie the majority's decision
22 in this case, and in this process hope to convince you that
23 the Commission, that you, in fact, do have the legal
24 authority to implement this program or a variation thereof.
25 I'll try to move through my comments as quickly as possible

1 so that you will have time for questions later.

2 Roughly speaking, the overriding question is
3 whether or not the Missouri Public Service Commission has
4 the legal authority to approve Laclede's Catch-Up/Keep-Up
5 program, and underlying this issue, as I understand it, are
6 certain subissues which you have noted in your Report and
7 Order reflecting the program. And the first of these that
8 I'd like to talk about is the notion of single-issue
9 ratemaking.

10 At page 16 of your January Report and Order,
11 you concluded that approval of the program as proposed would
12 constitute single-issue ratemaking, which is unlawful. When
13 I read that, I thought that can't -- that's not right.
14 That's not my understanding of what's going on here.

15 What is single-issue ratemaking? And I went
16 back and took a look at the UCCM case, the UCCM case, 585
17 Southwest Second 481, which is a 1979 Missouri Supreme Court
18 case that I'm sure you're familiar with, and everybody seems
19 to cite it around here on a regular basis for just about any
20 proposition that they have.

21 But in that decision you'll find a good
22 discussion of single-issue ratemaking. And I went back and
23 took a look at that, but by way of background, that case,
24 the issue before the Supreme Court was whether or not the
25 fuel adjustment clause for the electric utilities that the

1 Commission had authorized and which had been in effect for
2 several years was lawful. And the Supreme Court said that
3 it wasn't.

4 The Court said that in setting rates, absent
5 some other directive by the Legislature, the Commission must
6 consider all relevant factors in that process. So in other
7 words, the prohibition against single-issue ratemaking is
8 not some constitutional prohibition. It's a prohibition
9 that exists because the Legislature hasn't authorized it.

10 The Missouri Supreme Court's decision in that
11 case was limited to that question, has the Missouri General
12 Assembly authorized by statute the fuel adjustment clause?
13 And the court said no, and on that basis found that the
14 Commission's decision authorizing it was unlawful. That's
15 what single iss-- that's what single-issue ratemaking is,
16 setting rates without considering all factors.

17 That same case also has a good discussion on
18 the concept of retroactive ratemaking, which the Court
19 defines as the setting of rates which permit a utility to
20 recover past losses or which require it to refund past
21 excess profits collected under a rate that did not perfectly
22 match expenses plus rate of return with the rate actually
23 established. That's a quote from the decision.

24 So in other words, while past expenses are
25 used as a basis for determining what rate is reasonable to

1 be charged in the future, if there is an imperfect matching
2 of rates with expenses, this cannot be cured retroactively.

3 Now, given this understanding of single-issue
4 ratemaking, you've got to look at all elements of cost of
5 service in setting rates, unless the Legislature has told
6 you otherwise. And given this understanding of retroactive
7 ratemaking, it's clear to me that neither of those are
8 present in this case that's before you this afternoon.

9 And that is because Laclede's Catch-Up/Keep-Up
10 program does not in any way change the company's revenue
11 producing rates. All customers will continue to be charged
12 those cost-based rates for services which have been
13 authorized by the Commission in Laclede's most recent rate
14 case. All the program does is to provide some of those
15 customers who pay those rates a means to work off the
16 arrearage part of their bills.

17 Now, while some might want to argue that the
18 program is unlawful because Laclede's PGA will be changed,
19 will be adjusted, to the extent that there are adjustments
20 in its PGA on a going-forward basis, those will really be in
21 the nature of rate design changes. And as the Staff's
22 witness testified in this case, that's something that the
23 Commission can and has done outside the context of a general
24 rate case; that is, PGA changes, rate design changes are
25 made outside the context of a general rate case.

1 In any event, and even with a PGA rate design
2 change, all of the pipeline discounts which the company
3 receives will continue to be flowed through to its
4 customers, either through the traditional manner or through
5 the program, and in the revised program that the company has
6 proposed by its application for rehearing and motion for
7 reconsideration, that would amount to \$3 million. Nothing
8 is staying with the company. There is no increase in
9 revenue-producing rates.

10 So in our view, since there's no ratemaking or
11 change to revenue-producing rates, there cannot be, by
12 definition, single-issue ratemaking or, for that matter,
13 retroactive ratemaking. At most, what we have here is
14 simply a matter of rate design.

15 Now, I think you're all aware that it's
16 Laclede's proposal to fund the program through the use of
17 pipeline discount savings which have been achieved by the
18 company. And as I indicated, those -- those savings would
19 be flowed through to Laclede's customers either through the
20 program or through the PGA process.

21 At page 13 of its Report and Order in January,
22 the Commission indicated that it was unwilling to adopt a
23 policy that allows the collection of bad debts through the
24 ACA process. The Commission further concluded that such a
25 use of the PGA/ACA mechanism is unlawful and that,

1 therefore, Laclede's funding mechanism for the program is
2 unlawful.

3 Our response to that is, first of all, the
4 factual finding that what is going on here or what is being
5 proposed is the collection of bad debt expense through the
6 ACA process is incorrect. The amount of bad debt expense
7 which Laclede Gas Company is authorized to collect is
8 already built into its rates which were recently approved by
9 the Commission in its last rate case, Case No. GR-2002-356.

10 Once again, Laclede's rates are not being or
11 would not be changed as a result of this program. The
12 program is simply being funded with the pipeline discounts
13 through the PGA/ACA process.

14 The program has nothing to do with collecting
15 bad debt expense through rates, although it is hoped that
16 the program will help to reduce bad debt expense, which will
17 benefit all customers in the future through lower rates.
18 And that's one of the principal reasons that we think you
19 should consider allowing this experimental program.

20 This, then, leads to the question of law in
21 our minds and raised in your decision as to whether or not
22 the Commission may, in fact, allow the PGA/ACA process to
23 be used to flow through these pipeline discounts in the
24 manner in which Laclede has proposed. And, once again, we
25 think the answer to that is clearly yes, and our legal

1 support for that, our principal legal support for that would
2 be the Midwest Gas Users Association case, which is found at
3 976 Southwest Second 470.

4 And you will recall that's the case in which
5 the Missouri Gas Users Association challenged the Commission
6 order authorizing the use of the PGA/ACA clauses in general,
7 and also challenged the use of an experimental gas cost
8 incentive mechanism. The Missouri Gas Users Association
9 argued that even if the PGA were legal, which they were
10 trying to set aside at that time, even if it was legal,
11 Missouri Gas Energy's experimental gas cost incentive
12 program violated Missouri law.

13 So there we had a challenge to the PGA and we
14 also had a challenge to an experimental program. The Court
15 determined that the program did not constitute single-issue
16 or retroactive ratemaking. Instead, it would be putting
17 form over substance to approve a PGA/ACA procedure, but
18 disapprove the more cost-effective and beneficial incentive
19 mechanism.

20 The Court also went on and affirmed the
21 PGA/ACA process and found that it was, in fact, authorized.
22 Now, if you'd asked me before that case had been litigated
23 if I would have predicted that outcome, given the UCCM case,
24 I probably would have said no, because if you look at the
25 statute it's difficult to find a specific reference to the

1 PGA process. But the Court, for reasons stated in there,
2 concluded that, yes, the PGA/ACA process was lawful, and
3 second, the incentive program which was litigated in that
4 case was also lawful.

5 The Court, in discussing whether the program
6 was analogous to the company setting its own rates, stated
7 that the only issue with regard to the subject costs was who
8 was going to pay for them, not how much was going to be
9 paid.

10 So I submit to you that in this one case you
11 will find an answer to most if not all of your legal
12 concerns; your concerns about your ability, your authority,
13 your legal authority to approve this program. You can use
14 the PGA/ACA process in the way proposed by Laclede's
15 program. You're not setting rates by doing that, it's not
16 single-issue or retroactive ratemaking, and finally you can
17 approve experimental programs.

18 Now, contrast that for a minute, if you would,
19 with the fact that, to my knowledge, the courts in this
20 state have not been called upon to decide the lawfulness of
21 a lot of other experimental programs; low-income assistance
22 programs, weatherization programs, other programs approved
23 by this Commission which increase rates in order to fund
24 credits to customers.

25 To my knowledge, none of those programs have

1 been challenged. And, for example, the Missouri Gas Energy
2 program established in 2001 created an experimental
3 low-income program funded with a surcharge on residential
4 customers. And I think you're all aware that the parties in
5 the most recent Empire District Electric Company rate case
6 agreed to formulate such a program and present it to you, I
7 think, no later than April of this year, and in the Empire
8 case actual dollars were built into the company's
9 residential rates which are earmarked for the program.

10 So we have programs of that variety which are
11 out there, which to my knowledge have never been challenged,
12 but may from a legal standpoint have weaker legs than the
13 Laclede program which has been proposed, which we think has
14 essentially been tested in the courts and found to be
15 lawful.

16 Stated another way, because Laclede will use
17 the very kind of incentive-related discounts which the Court
18 in the MGE UA case indicated that utilities could undertake,
19 and you'll recall in that case those discounts, some of them
20 were flowing directly to the shareholders of the company,
21 and the Court said that was okay.

22 In Laclede's program, instead of those
23 discounts flowing to the shareholders, they're flowing into
24 the program and ultimately to help low-income customers,
25 rather than improve the company's bottom line. So there you

1 basically have the same program but with different
2 recipients, different beneficiaries, the company's poor
3 customers as opposed to the company's shareholders.

4 Now, the Staff has argued that the program
5 should be funded by means of an Accounting Authority Order
6 and, in fact, I recall and will take you back to the opening
7 statement in this case when it was tried. Staff counsel
8 told you that the Commission does, in fact, have the legal
9 authority to proceed with the program on an experimental
10 basis, and that the only real issue was how the program
11 should be funded. And I want to remind you of that fact,
12 because I think it's extremely significant with respect to
13 what we're talking about here this afternoon; that is, do
14 you have the legal authority to do this if you want to?

15 And I would refer you specifically to page 30
16 of the transcript in that hearing where it's found the
17 following statement made by Staff counsel, and I quote, If
18 the Commission believes that the theory is worthy of further
19 study to determine if the program works, and Staff certainly
20 believes that it is, the Commission can approve the program
21 on an experimental basis so that it can be implemented to
22 see if it is effective in assisting some low-income
23 customers or perhaps all, as well as whether or not it's
24 cost effective. Again, the question is funding. Who pays?
25 Staff proposes that the Commission approve the program and

1 grant Laclede an Accounting Authority Order as a fair and
2 reasonable way to fund the program.

3 To me, the real telling point with that
4 statement is, is that the Staff is saying that if you want
5 to approve the program, if you want to go ahead and do it
6 from a policy standpoint, there's no legal prohibition. And
7 that's our position.

8 We recognize that from a policy standpoint you
9 may decide that you don't want to do this. But as to the
10 question as to whether or not you have the legal authority
11 to do it, we think you clearly do, and we think the Staff
12 has indicated the same thing.

13 By suggesting you do it with an Accounting
14 Authority Order, as opposed to our method, the Staff is
15 still telling you that you've got the right to do this from
16 a legal standpoint. So the only apparent argument we would
17 have with the Staff would be the funding method, and that
18 takes us to the Accounting Authority Order approach that the
19 Staff has suggested.

20 And I recognize that that question is not a
21 legal argument. It's a question of facts, how should the
22 program be implemented if you're going to have one. But let
23 me touch on that and tell you why that's not an acceptable
24 alternative to the company, and basically it has to do with
25 the fact that the company will end up paying for the program

1 that way.

2 Past experience with the AAO process indicates
3 that it's quite possible, it's likely that the company would
4 not recover all or even most of the cash outlays it would
5 make to fund the program. Jim Fallert, who was a Laclede
6 witness, testified that the return of dollars pursuant to
7 Accounting Authority Order mechanisms resulted in recovery
8 of 50 percent or less of the original dollars on a present
9 value basis, given the fact that that's the way the Staff
10 and the Public Counsel have recommended recovery over
11 periods of 10 to 15 years.

12 What this amounts to is a long-term
13 interest-free loan from the company shareholders to its
14 ratepayers. And there are other ratemaking nuances that go
15 with that. The end result is the company's ultimate
16 recovery of amounts deferred in the Accounting Authority
17 Orders is only a fraction of the value of the original
18 dollars deferred. And so that's just not a workable
19 solution from the company's standpoint.

20 But it really has nothing to do with whether
21 or not you have the legal authority to approve the program,
22 and that's the real point. And we think the Staff
23 apparently agrees with us that the Commission has broader
24 legal authority to adopt limited experimental programs, even
25 outside the confines of a rate case, and that all you --

1 that you do have the necessary statutory authority to
2 approve the program. And we think the Staff is right on
3 that point, because there have been many experimental
4 programs which the Commission has authorized over the years,
5 and I think they've been discussed in some detail in
6 testimony in this case.

7 I mentioned two earlier ones, the Missouri
8 Gas Energy program, which we think is really on point, and
9 the Empire District Electric program which is under
10 development which will be very similar to the MGE program.

11 Now, there has been the suggestion that
12 there's a meaningful distinction between MGE's program,
13 which was the result of a settlement agreement, and, of
14 course, the Empire program was also the result of a
15 settlement agreement, that there's been the suggestion that
16 that somehow makes a difference with respect to whether or
17 not the program is lawful.

18 And I don't think that stands up under
19 analysis. I think everyone would agree that the Commission
20 may not approve an otherwise unlawful program just because
21 the parties are in agreement. I think it's pretty much
22 Hornbook law that parties cannot contract around something
23 that's unlawful and thereby make it unlawful, just as
24 parties can't confer jurisdiction on the Public Service
25 Commission where none exists. I mean, we can't by agreement

1 tell you you've got the authority to do something and then
2 you go ahead and act on that and do it and that makes it
3 lawful.

4 And I think you've recognized that in the
5 past. I can cite you to one case; it's Office of the Public
6 Counsel versus Missouri Gas Energy, 6 MoPSC 3rd 464, 1997
7 case, where you refused to approve the Unanimous Stipulation
8 and Agreement where you said, and I quote, the Commission
9 cannot proceed in the manner contrary to the terms of a
10 statute that may not follow a practice which results in
11 nullifying the express will of the Legislature. So I think
12 you would recognize that.

13 Furthermore, the fact that all parties
14 don't agree on an experimental program, as is apparently the
15 case here, has not been a bar to you-all approving
16 experimental programs in the past. And I'm going to give
17 you two cases on that. In Case ET-97-209, which was an
18 electrical aggregation experiment tariff which had been
19 proposed by Missouri Public Service, over the objection of
20 IBEW Local 8134, the Commission approved the tariff.

21 Now, in that case the Commission suspended
22 the filing and after hearing directed the company to refile
23 a substitute tariff sheet, which the Commission then
24 approved. In another case, over the objection of Public
25 Counsel, the Commission also approved the experimental

1 small volume customer aggregation program for schools, which
2 was also proposed by Missouri Public Service, and that was
3 Case GT-2001-61. And in that case the Public Counsel had
4 various concerns with the tariff, including that it lacked
5 sufficient protections for consumers and lacked clear
6 reporting requirements. And the Public Counsel sought
7 to suspend the tariff.

8 Well, the Commission didn't do that. The
9 Commission found that the experiment was worth conducting
10 and said, and I quote, MPS has effectively responded to each
11 of the concerns raised by Public Counsel. The experimental
12 small volume customer aggregation program may benefit
13 consumers of natural gas and its results will be evaluated
14 to determine whether or not benefits were obtained by these
15 consumers. It is an experiment worth conducting. The
16 Commission will not suspend the proposed tariff.

17 And three of the present Commissioners, three
18 of the Commissioners that are on the Commission today were
19 on that order. I submit to you that that case is directly
20 on point with what we have here. Laclede has responded to
21 the concerns of the other parties in its design of the
22 Catch-Up/Keep-Up program, and this Commission now simply
23 needs to make a policy decision as to whether or not the
24 experiment is worth conducting.

25 I think the last legal point that I will touch

1 on is one that you mentioned in your January Report and
2 Order, where you raised but did not answer the question of
3 whether a company may charge customers within the same class
4 a different rate for the same service. And the statute that
5 you were looking at at that time and referred to was Section
6 393.130, subsection 2.

7 To my knowledge, that statutory provision has
8 not been the basis of any successful challenge to a Public
9 Service Commission decision. There may be one out there,
10 but I'm not aware of it. But first of all, as I have
11 indicated to you, the program that we're talking about will
12 not result in different rates being charged and, therefore,
13 that part of the statute is not applicable. To the extent
14 that the PGA rates do change, this is really a rate design
15 adjustment with no increased revenues flowing to the
16 company.

17 You have a closer question when you get around
18 to the fact that customers who are under the program will
19 have their arrearages reduced, and so the actual amounts
20 collected may vary. That will occur, but that's not unlike
21 what occurs under the Cold Weather Rule, which also provides
22 special help to low-income customers within the same class.

23 That ought not to be a bar to you-all
24 approving the program, because the MGE experimental program
25 gives credit to certain customers, and to my knowledge, no

1 one raised this potential legal problem with that program
2 when it was adopted. No one has said it violates the
3 provisions of 393.130, subsection 2. And it raises the
4 question, in my mind at least, in connection with the Empire
5 case, and that program is still under development, but some
6 now say that even though it's been agreed to and approved by
7 the Commission, it violates that provision and challenge it
8 on that basis.

9 But that statute should not be a bar to you
10 approving the program. It's -- Laclede's program is an
11 experiment, as is the MGE program and as will be the Empire
12 program, and the Commission clearly has the authority to
13 approve experiments. If those programs are lawful, and I
14 indicated to you earlier I think there's probably -- you can
15 make a better case that Laclede is, but if those programs
16 are lawful, Laclede's Catch-Up/Keep-Up program certainly is
17 lawful.

18 Now, obviously, nobody can guarantee if you
19 issue an Order approving a program that it won't be
20 challenged under the statute or on other some other grounds.
21 And nobody can guarantee that it will withstand that
22 challenge, although we would do our best to see that that
23 occurred.

24 But the reverse of that is no party can stand
25 up here today and tell you with absolute certainty that the

1 program's unlawful and would not withstand that challenge.

2 And in any event, I think if you look at the
3 parties to this case, the parties who are before you this
4 afternoon, and appeal a decision on your part approving the
5 program is pretty unlikely and, in any event, would probably
6 have no practical effect. And I say that for a couple of
7 reasons.

8 First of all, the way the system works, and I
9 know there's some suggestions that maybe it ought to be
10 changed, but the way it works right now is, if you issue an
11 Order approving this program, the lawyers sitting here in
12 this room that have been fighting it will now turn around
13 and defend it to Staff, so I'm not too worried about them
14 appealing it.

15 I don't think the Attorney General will
16 appeal, and Mr. Molteni certainly can speak for himself, but
17 they support, as I understand it, the weatherization
18 component of the program, and I can't believe that the
19 Attorney General is going to want to appeal a program that's
20 designed to benefit the people that this program's designed
21 to benefit.

22 So that leaves the Public Counsel. And I can
23 only take what he has said in his pleadings as a basis for
24 where I think the Public Counsel will come down, and that
25 is, he has said that if you do the program, do it at a

1 \$3 million level as opposed to a \$6 million level. Now,
2 Mr. Micheel is here and he'll tell you what their plans are,
3 but I can't believe that, given that, that the Public
4 Counsel would appeal your decision approving this program.

5 But in any event, assuming that happens,
6 assuming that Public Counsel does appeal, he can't stay the
7 program, so we're going to have it in effect for a
8 considerable period of time, and we'll find out whether or
9 not it works. So even if you're unsure, I think the risks
10 of getting it turned around are slim and I would think that
11 if I was advising you, I would give you some comfort in
12 that.

13 Now, there have been some questions raised
14 about Laclede seeking preapproval from the Commission on a
15 tariff that hasn't been filed. Well, I don't think that --
16 that's what's going on here. We filed a motion for
17 reconsideration. This Commission, in many cases,
18 has looked at what's before them and said, we won't accept
19 that, but if you do this, that's okay. You do that in rate
20 cases all the time. It's common practice for the Commission
21 to enter an Order stating the reasons for denial of a
22 certain request and then stating that it will approve a
23 filing which is consistent with the Commission's filings.
24 You do that all the time.

25 The Commission did just that very thing with

1 respect to the gas service company's application to
2 implement a weatherization program funded by revenue
3 collected through incremental pricing and an incremental
4 pricing surcharge back in 1982, and the cite on that is
5 25 MoPSC new service 351. You did the same thing with
6 respect to the Missouri Public Service electric experiment
7 tariff, which I discussed earlier. And, in fact, I recall
8 you can go back and look at the transcript, and I believe
9 it's transcript page 177, Judge Ruth in this case said that,
10 in fact, the Commission could do that in this case. And I
11 think she's right.

12 Furthermore, I would add that the Company is
13 not trying to circumvent due process by denying parties
14 their ability to review and comment on what Laclede now has
15 in front of you. All aspects of the currently proposed
16 program were discussed and debated in the proceeding. In
17 fact, if the fact that we don't have a tariff with all this
18 in front of you, we can cure that immediately.

19 We are prepared to file another tariff that
20 essentially adopts everything that the Public Counsel has
21 said should be in the program, with the exception of the
22 provision about bringing the contracts back to you for
23 further hearing and adjudication. So I don't think that the
24 fact that the exact proposal is not in front of you in
25 tariff form should be a bar to you proceeding and approving

1 what we have asked you to do.

2 And then finally, I'm not sure how to assess
3 this, but I alluded to it earlier. There's a possibility
4 that by failing to approve this program, on a legal basis,
5 not a policy basis but by turning it down on a legal basis,
6 you may be risking some adverse outcome in some of these
7 other experimental programs that I talked about. You've got
8 the weatherization programs, we've got the MGE Empire
9 program, we've got the Cold Weather Rule. We've got
10 economic development rates.

11 If this Commission says -- and I think you
12 would be saying it for the first time -- that you don't have
13 the legal authority to approve programs of this type, others
14 then could use that in challenges to existing programs or to
15 future programs which are still under development. Once
16 again, I don't know how to weigh the likelihood of that
17 occurring, but I think it is something that you need to be
18 aware of.

19 And with that, I will end my comments. I
20 thank you for your time this afternoon. I'll try to answer
21 questions you have on these legal issues, and to the extent
22 that you go beyond my expertise, which it probably wouldn't
23 be too hard to do, I can refer you to Mr. Pendergast or
24 others who are here. Thank you very much for your time.

25 JUDGE RUTH: Thank you. I think we'll

1 probably move on to the next set of oral arguments, unless
2 the Commissioners have a question they want to ask right
3 now.

4 MR. SWEARENGEN: Thank you.

5 JUDGE RUTH: We'll come back for questions
6 later, and move on to Staff.

7 MS. SHEMWELL: Good afternoon, may it
8 please the Commission?

9 Not every program designed to help low-income
10 customers is a good program. The challenge is finding a
11 reasonable and equitable way to provide that assistance that
12 actually addresses problems of low income while maintaining
13 a balance between the groups impacted by the program.

14 The Commission really got to the heart of the
15 matter in this case when it said that a properly designed
16 low-income assistance program should benefit all
17 stakeholders by promoting conservation and assisting low
18 income in reducing their energy burden. The Commission also
19 very correctly determined that this particular proposal
20 should be rejected because of its flawed design and unlawful
21 funding mechanism.

22 In its request for rehearing, Laclede has
23 presented nothing new on these issues that should cause the
24 Commission to change its opinion in this case. Laclede's
25 offer to reduce the funding level does nothing to change the

1 flawed design. If the program's unlawful at 6 million, it's
2 also unlawful at 3 million or 1 million.

3 Laclede's pleading that reemphasizes that
4 there's a need for a program to address the problems of low
5 income. However, there's no evidence that this particular
6 program would actually achieve that goal, because there's no
7 evidence that customers who couldn't pay their bills two
8 years ago can now pay the increased rates, the higher gas
9 costs.

10 There's nothing to show that these customers
11 can keep current with their bills. There's also no evidence
12 that income has increased for these customers or that
13 there's more energy assistance available to them, and
14 instead of reducing the energy burden on customers, this
15 program actually increases the energy burden.

16 Laclede argued that this doesn't increase
17 rates, but it does, in fact, increase the cost to customers
18 by \$3 million, all customers. The legal issue is funding.
19 The Commission correctly determined it could not do that
20 funding through the ACA, and Laclede again argued nothing
21 should change the Commission's opinion. In its request for
22 rehearing, Laclede offered to reduce the amount of the -- or
23 the level of funding to 3 million, but there is no tariff in
24 front of this Commission and you have already rejected the
25 tariff that has been filed, so there is nothing pending.

1 Laclede's attempt to negotiate with the
2 Commission at this point is like trying to negotiate with a
3 judge in circuit court, and the Commission should not agree
4 to that.

5 Additionally, it denies due process in this
6 respect. If the tariff were approved, the parties should
7 have the opportunity to intervene and relook at all of the
8 issues, unless all issues have already been heard, and
9 unless there were absolutely no new issues, then due process
10 would be denied. And I would note that in footnote 3,
11 Laclede actually puts in a new component to the tariff.
12 Customers would pay their current bills instead of levelized
13 pay. So there are some new issues that might be included in
14 a tariff filing.

15 I'd like to look at the issue of lawfulness.
16 In the request for rehearing, significantly Laclede did not
17 say anything about the single-issue ratemaking. But they
18 did mention that this should have an impact on reducing
19 their bad debt and that's really the reason that it can't go
20 through the ACA/PGA process.

21 The first case was a hotel continental case
22 that said that taxes could go through because that was a
23 very discrete and unusual type of cost to the utilities that
24 would not be affected by reduction in other costs. Margin
25 costs, however, should not be determined outside of a rate

1 case because the Commission's required to consider all
2 relevant factors, and reduction in bad debt is a cost that
3 should be offset.

4 In other words, bad debt is not a discrete
5 cost that should ever be considered outside of a rate case.
6 UCC said that a fuel adjustment clause for electric, which
7 was going to pass the gas costs through, could not be done
8 because there was a single-issue ratemaking and the PSC had
9 to consider whether all other costs had decreased, and this
10 had offset any increase in fuel costs. And they determined
11 that by allowing that particular cost to flow through, the
12 Commission abdicated its responsibilities to set rates.

13 Staff does believe that its program is worthy
14 of further study. That does not mean that Staff believes
15 that it is a program that is necessarily well designed. We
16 do believe that the Commission has a legal authority to
17 approve this, but in a rate case, and that's why Staff
18 suggested the AAO. It would put off consideration of the
19 cost until the next rate case.

20 I believe Staff proved that Laclede should not
21 really be out much cash besides incremental costs.
22 Forgiving bad debt as Mr. Rackers testified is a non-cash
23 item. So all you have is the cost of actually administering
24 the program.

25 I would like to point out that Laclede has

1 never asked the Commission to approve this as a gas supply
2 incentive plan. They have claimed it's like a GSIP, the
3 concept of a GSIP, but they haven't actually ever said,
4 please apply this as a gas incentive plan. Why? Because it
5 isn't.

6 There's no evidence at all that this program
7 was structured as an incentive plan, and you have to ask
8 yourself why should a company be -- why should the company
9 get an incentive for doing the same thing that they have
10 done for the past few years? There's no evidence that this
11 plan would provide any benefit for customers.

12 Now, if Laclede actually filed a GSIP tariff
13 and if the Commission were to approve that Laclede can use
14 its retained share to fund this program, Staff would not
15 have a problem with it, and this feature is critical in
16 understanding this case. If this is -- if this were a GSIP
17 and was filed as a GSIP, then Laclede is entitled to the
18 monies that it keeps as is determined by the design of the
19 GSIP. These ratepayer funds are transferred to Laclede to
20 keep because they have achieved a benefit for customers.
21 And then Laclede could do with it as it chose, just as
22 Laclede could spend its own money in any way it chose to
23 fund this program.

24 This program, however, takes those funds and
25 then specifies that these ratepayer funds are to be used in

1 a specific manner before Laclede would qualify for the
2 funds. That condition is not related to superior
3 performance by Laclede in gas purchasing. So the Commission
4 should reject any suggestion that this is a GSIP.

5 Also, the PGA/ACA process has been presented
6 to customers as the company will set the rates for gas
7 costs. The actual gas costs will be determined and you will
8 either be refunded a portion if it was too high or you will
9 pay more if it was too low, and it was limited specifically
10 to that cost. That was the deal with customers in PGA.
11 This changes that equation and says, oh, but yeah, we'll add
12 a few margin costs in over here too, and we'll put a
13 surcharge on it. That's not what the ACA PGA process was
14 designed to do.

15 The Staff agrees that the Commission does --
16 agrees that the Commission does have broad discretion to
17 approve experimental rates, to test how rates are
18 calculated; however, this is not an experimental plan in
19 that Laclede has never agreed to keep the records that the
20 Commission felt was necessary. With an experimental plan,
21 you have a thesis and then you test the thesis and keep
22 records and you decide if it's working.

23 Typically it's done on a small basis to decide
24 if the theory works. In this case Staff thinks that the
25 underlying theory is faulty. Staff doesn't agree

1 necessarily for an arrearage forgiveness plan, but actually
2 thinks that it should probably be done in connection with
3 other low-income assistance that actually addresses the
4 underlying need.

5 Nobody questions that there's a need for
6 low-income assistance. Staff certainly is not suggesting
7 that there's not a need. That's why -- one of the reasons
8 that Staff wanted this to be part of a rate case, and then
9 it could be in place if it had been part of a rate case.
10 The Ameren, MGE and Empire experiments have all been done as
11 part of a rate case. Staff tried to suggest some
12 alternatives so that this program could be implemented. But
13 it just didn't happen.

14 I would like to evaluate the risk to other
15 experimental programs. I believe it is zero. When the
16 program like this is approved in the Stipulation and
17 Agreement, all of the parties have agreed that it's just and
18 reasonable. They have agreed as part of that stipulation
19 that whatever benefits they're receiving are sufficient to
20 offset any concerns they might have with this program.
21 Staff is very concerned with the problems faced by
22 low-income customers and would like to see an assistance
23 program that's actually effective in assisting them.

24 I do want to mention something. I believe
25 that Laclede's characterization of Staff's actions were

1 somewhat misleading. Staff throughout the negotiation
2 process always raised its concern that the funding mechanism
3 was unlawful. At every meeting, every discussion, I
4 personally raised the issue, but this is an issue that we
5 have trouble overcoming and we don't see how we're going to
6 overcome that outside of a rate case.

7 I would remind you that the courts have
8 regularly said that the exigency of a situation does not
9 constitute grounds for the Commission to act outside of its
10 statutory authority. In this case, I would suggest that the
11 need for a program does not permit the Commission to
12 surcharge in the PGA/ACA process.

13 And just a final note, Janet Hirschman asked
14 me to mention to the Commission that it wasn't a lack of
15 interest on her part that she did not testify in this case.
16 She was having some health problems, and she wanted you to
17 know that she was interested, but was just unable to
18 testify. Thank you.

19 JUDGE RUTH: Thank you. And Public Counsel?

20 MR. MICHEEL: May it please the Commission?

21 As I was reading through the various motions
22 and in receipt of this latest order setting this oral
23 argument, my mind kept drifting back to a book I read when I
24 was a child, and it was Lewis Carroll's Alice in Wonderland.
25 As the coo-coo case, as I like to refer to it, has

1 progressed, I just get the feeling that I'm Alice and I've
2 tumbled down the rabbit hole, and things are getting
3 curiouiser and curiouiser with this case.

4 And, you know, I don't know where to start,
5 but let me start at the beginning, because I always think
6 that's a good place to start. But it's still curiouiser and
7 curiouiser. And I've got to tell you, I've been practicing
8 law for 12 years and this is the first time I've been at a
9 hearing to determine whether or not we're going to have a
10 rehearing, and I sure hope it's the last one.

11 The program that Laclede proposed initially,
12 they sought 30 percent of the pipeline discounts. They were
13 going to give 20 percent to the customers, they were going
14 to pocket 10 percent. The Office of the Public Counsel
15 opposed that for all the reasons it opposed its new program.
16 Well, Laclede withdrew that program.

17 They filed a new program. This program wanted
18 \$6 million, and various things, and they filed that. And we
19 had a hearing about that program, and the Office of the
20 Public Counsel consistently said that there were public
21 policy reasons that you should not accept this program and
22 there were legal reasons that you should not accept this
23 program.

24 We did say, however, if the evidence presented
25 to you overcame those public policy reasons, and the Report

1 and Order is replete with factual evidentiary findings based
2 on the record that the company did not overcome those policy
3 reasons, and if they overcame the legal issues that we
4 raised, and at least as the Report and Order is written
5 currently, the company -- the Commission determined the
6 company did not overcome those legal hurdles, then and only
7 then did the Office of the Public Counsel propose a proposal
8 that it thought was more appropriate.

9 And in looking at the Report and Order and
10 reviewing Laclede's motion for reconsideration and
11 rehearing, there is not one scintilla of new evidence there
12 that should lead this Commission to change its mind with
13 respect to the public policy findings. And they are
14 numerous in the Report and Order. And in the view of time I
15 was thinking about going over them, but you guys know what
16 you did, and it's just not going to be worthwhile.

17 But here's where I feel like, you know, I'm
18 looking through the looking glass again and things are
19 getting curiouser and curiouser. Now in the motion for
20 reconsideration Laclede is willing -- ready, willing and
21 able to accept Public Counsel's \$3 million alternative.
22 Okay. This is after the close of evidence, after we've had
23 a chance to negotiate, and after they filed their brief in
24 this case.

25 Well, let's look at Laclede Gas Company's

1 brief in this case and see what they said about Public
2 Counsel's \$3 million proposal. I would draw the
3 Commission's attention to footnote 10 on page 26 of Laclede
4 Gas Company's initial brief where it says, there are several
5 recommendations made by Public Counsel that the company does
6 not believe should be adopted, ellipses. This includes
7 Public Counsel's recommendation that the program funding be
8 limited to an overall amount of approximately
9 \$3 million per year.

10 So when the company filed their brief, they
11 dropped a footnote down in footnote 26 and said no -- excuse
12 me -- footnote 10, page 26, and said don't accept Public
13 Counsel's \$3 million funding level. Then the company went
14 on at page 30 of its brief and discussed the minimum funding
15 level, page 29 and 30. And let me just read this to you
16 because this is where I get even more confused.

17 It says, quote, finally it should be
18 remembered that part of the information to be gathered in
19 order to assess this experimental program pertains to the
20 level of interest and participation by the company's
21 customers, setting the funding level at too low of a level
22 of interest to make evaluation of this aspect of
23 the program problematic while also denying potential
24 benefits to the customers who now need it. So they
25 criticized specifically a lower funding level.

1 They say, accordingly, Laclede believes that
2 its proposed funding level for the program is both
3 reasonable and proportionate to the need that exists.
4 Nevertheless, in the event the Commission is inclined to
5 consider a lower funding cap, however others have
6 recommended, Laclede believes that it should be at least
7 equal to the amount of the program funding that would have
8 been produced before the company proposed a supplement
9 funding with 10 percent shared pipeline discount that it had
10 originally proposed to retain for its own use. In other
11 words, the amount should be at a minimum the equivalent to
12 the \$4.6 million amount that would have been produced had
13 the company's original proposal to use 20 percent of the
14 pipeline discount to fund the program been adopted.

15 In essence, the company in their own brief
16 told you that this program, if funded at a level of
17 \$3 million, would be ineffective, problematic and would not
18 work. The Commissioner who filed a dissent saying she would
19 approve this program said specifically in the dissent that
20 she would approve it for \$4.6 million. Now we've got a
21 whole new program here.

22 There's been no new evidence about this
23 program. Mr. Swearengen says, well, you know we're prepared
24 to file a tariff tomorrow that incorporates all of Public
25 Counsel's concerns. We haven't seen that tariff, and if the

1 Commissioners will recall, there was an exhibit -- and the
2 number escapes my mind -- that was filed by the company and
3 shown to Ms. Meisenheimer that set out all of the reasons,
4 you know, and what they had said they were going to do and
5 if it took care of Public Counsel's concerns. And
6 Ms. Meisenheimer clearly said no, it didn't.

7 So I stand here today curious about what that
8 tariff is going to do and what we've agreed to or what they
9 say they've agreed to, and unfortunately, I've been around
10 long enough to know that what they think we've agreed to
11 isn't necessarily what we'd be willing to agree to. And, of
12 course, we'd only be willing to agree to that if the public
13 policy concerns were overcome -- they haven't been -- if the
14 legal issues are taken care of. They haven't been. I mean,
15 simply put, there is absolutely no reason to rehear this.

16 Now, let me talk a little bit about
17 Mr. Swearingen's arguments about the legal issues, and I'll
18 be brief because our position hasn't changed. One thing
19 that we've been in this case is consistent, and I think
20 that's a good thing. Maybe we're wrong, but we've been
21 consistently wrong, if we are wrong, and I don't think we
22 are.

23 First of all, he argued it's not single-issue
24 ratemaking. Well, we disagree. It's in our initial brief.
25 That reasoning hasn't changed, but we're not considering all

1 relevant factors here. The evidence was abundantly clear
2 that this program would affect uncollectibles expense, would
3 affect the amount of resources Laclede had delegated to do
4 collections, and that's a base rate issue. That's a
5 problem. We've said that from the beginning. It's still a
6 problem.

7 I believe that Mr. Fallert testified -- and I
8 don't have the transcript because I just didn't have time to
9 look it up, but I know it's in our brief -- Mr. Fallert
10 testified that the company would receive at least \$1 or
11 \$2 million, and I believe his testimony was in response to
12 Commissioner Gaw or Commissioner Lumpe, that if the program
13 is not implemented, their uncollectibles would be equal to
14 what was built into the rate case.

15 So, you know, it seems to me there's a clear
16 mixing. Mr. Swaengen argued that, you know, the PGA
17 process was approved in the Midwest Gas Users case, and I
18 don't disagree with that. The thing that I disagree with
19 is -- and this Commission said in its brief to the Court of
20 Appeals that the only costs that can be included in the PGA
21 are gas costs. That's it. Nothing more. Nothing less.

22 Now, there was reams of testimony. I'm
23 specifically thinking of three Staff witnesses. I think it
24 was Mr. Imhoff, Mr. Rackers and, I believe, Mr. Sommerer,
25 who testified that you'd be mixing those up. And I think

1 the Commission made that finding -- properly made that
2 finding in its Report and Order as a finding of fact, and
3 nothing Mr. Swearingen has said here today is evidence that
4 should change that. It's merely his arguments, and it's
5 clear to me that those arguments didn't carry the day,
6 because I have a Report and Order that tells me that.

7 Mr. Swearingen also raised the issues of other
8 programs that we have, and he wanted to talk about the MGE
9 program and the Empire program that are for low-income
10 customers and he said, well, the distinction that everybody
11 is making about those programs is those programs were
12 settled programs. Well, that's not the distinction the
13 Office of the Public Counsel has been making, and that's not
14 the distinction we've always been making.

15 The distinction is and the key distinction is
16 that those programs were done and approved in the context of
17 a rate case where we considered all relevant factors in that
18 rate case, and it was a non-gas rate case. That's the
19 distinction that we have the problem with, not that it's a
20 settlement.

21 Now, maybe someone's going to come and
22 challenge those settlements. I don't know who. It's a
23 little late, but obviously somebody could file a complaint.
24 We're not going to. I don't think the company's going to.
25 I mean, those are all unanimous stipulation and agreements.

1 So I'm not worried about that. But that's the distinction
2 that makes the difference in this case, not that it was
3 settled. And that's not what we've said, and it is what
4 we've said. I'm sorry. Let me just correct the record.

5 Mr. Swearengen also talked about, you know,
6 the idea of setting different rates in a rate case, the
7 discrimination issue, which the Commission didn't reach and
8 it didn't have to reach because, first of all, there were
9 public policy reasons why this program should never go
10 forward. So you can set aside all these legal issues, you
11 don't have to decide them. There are good valid public
12 policy reasons this program shouldn't go forward. And
13 that's the end of it. I think you did a comprehensive job
14 in your Report and Order and I commend you for that.

15 But the rate differential, the case
16 Mr. Swearengen didn't recommend to you is the MGE case. And
17 I'm not good with numbers. I don't remember the number, but
18 it was where MGE wanted to flow back pipeline discounts to
19 customers. And I think there was \$100,000 at issue. And
20 this Commission -- and it wasn't appealed -- said no, you
21 can't do that. That's an illegal rate discount. And it
22 hasn't been challenged.

23 And I'm not professing to you that I know what
24 the courts are going to do. I was with Mr. Swearengen
25 because I was the appellant in the PGA case. I thought they

1 were going to strike the PGA case down, but I was wrong.

2 You know, I lived to fight another day.

3 But at bottom, there is no reason this case
4 should be reheard. Laclede has not raised one scintilla of
5 new evidence that should change the public policy findings
6 in this Report and Order, and the Commission got it right on
7 the law. So please, please, please, end my curious journey
8 and put this case to rest.

9 JUDGE RUTH: Thank you, Mr. Micheel.

10 And now DNR?

11 MR. MOLTENI: I'm not sure if I should say
12 anything after Mr. Micheel's argument, and now that
13 Assistant Attorney General Swaengen has already given away
14 our litigation strategy, I'm not sure there is anything else
15 to say.

16 DNR had one issue in this case and it was the
17 weatherization issue. We appreciate the change that Laclede
18 made to transform what we thought were meaningless cosmetic
19 weatherization components to the program to funding or a
20 funding component for a meaningful weatherization program or
21 funding of an already meaning weatherization program.

22 DNR did not and does not now take a position
23 on the legal issue of the funding issues involved with the
24 program. We were concerned at the time of the hearing as
25 this program changed from the tariff that was on file to

1 what it evolved into that this Commission did not have the
2 tariff in front of it and filed that Laclede was arguing on
3 which to adjudicate, and I think it's been transformed even
4 more. And that's the reason why we couldn't support
5 Laclede's motion for rehearing and consideration.

6 Even the specimen tariff that was filed in
7 this case had some details, I think, that were left to be
8 addressed that we discussed with Laclede's witnesses. Thank
9 you very much.

10 JUDGE RUTH: Okay. Thank you.

11 We're going to move to questions from the
12 Bench, and the way I propose to do it is, we'll start with
13 Commissioner Lumpe, and she'll let you know which party she
14 has a question for. She may ask the same question of all
15 the parties. She may not. We'll move down the row, and
16 then we'll probably do another round or two of the same type
17 of thing.

18 Commissioner Lumpe, you may begin.

19 COMMISSIONER LUMPE: Mr. Micheel, in the last
20 rate case, you proposed a GSIP; is that correct?

21 MR. MICHEEL: Yes, Commissioner.

22 COMMISSIONER LUMPE: Could the company use
23 whatever its part of that GSIP was to fund this?

24 MR. MICHEEL: Certainly they could. Once the
25 company's able to achieve any of those incentives, that

1 money becomes theirs and they can use it as they see fit.

2 COMMISSIONER LUMPE: So that within the
3 context of that rate case where a GSIP was proposed, if
4 there is a real need for this, the company could use its
5 portion of whatever the savings, or whatever they want to
6 call it, to fund this program, could they not?

7 MR. MICHEEL: Yes, assuming they achieve some
8 savings. Under our program or under the program approved in
9 the rate case, they could do that, Commissioner.

10 COMMISSIONER LUMPE: To Laclede, then, since I
11 think in your opening you said this is a critically needed
12 program, and my question is, if the stockholders were to pay
13 for it, would it still be critically needed?

14 MR. PENDERGAST: If I could answer that one.
15 I think it's critically needed no matter who pays for it,
16 Commissioner Lumpe, and I just want to reemphasize for the
17 record, as we did in our motion for reconsideration, that
18 Laclede and its shareholders have already paid a significant
19 amount to help its low-income customers.

20 There's significant things that Laclede has
21 done in the form of not only monetary contributions to
22 Dollar Help, in the form of administrative support for
23 Dollar Help, but it has also come in the form of allowing
24 customers to get back on the system and receive credit for
25 having their service restored under terms that are

1 significantly more favorable than what the company is
2 legally obligated to do under the Cold Weather Rule.

3 And that has come at a significant cost to
4 Laclede Gas Company. I think the undisputed record in
5 evidence was that since 1994 we have underrecovered our bad
6 debt expense by approximately \$7.5 million. That has been
7 due, in part, to the fact that while the Commission's rules
8 may say one thing, we go out and we try and work with our
9 customers and try and get them back on, even though we might
10 be in a position to say, we're not under any obligation to
11 do that.

12 And what we're trying to say is, we want to be
13 partners and we want to go ahead and continue to do what
14 we've been doing in trying to get customers back on and have
15 them maintained, but we need help to do that. And what
16 we've asked for is what we believe to be a modest amount of
17 help for our other customers that at most would cost them
18 31 cents a month, and that's if there were no savings under
19 the program.

20 So my answer would be I think we do believe
21 that it's critically needed, and I think we have tried to do
22 our part.

23 COMMISSIONER LUMPE: Is it correct that
24 neither the MGE or the Empire cases used the PGA?

25 MR. PENDERGAST: To my knowledge, that is

1 true. I know the MGE case didn't, and I'm assuming the
2 Empire case didn't as well.

3 MR. SWEARENGEN: The Empire District Electric
4 Company is an electric utility and it does not have a
5 purchased gas adjustment clause.

6 COMMISSIONER LUMPE: That's correct. Okay.
7 And I think you quoted a case dealing with the electric
8 company, was it not, on the fuel adjustment clause. That
9 was an electric company, wasn't it?

10 MR. SWEARENGEN: The fuel adjustment clause
11 case originated on an appeal by the Office of the Public
12 Counsel to the Commission's decision, which authorized the
13 continuation of that. And, of course, it did, in fact, just
14 involve electric utility companies. But I cited that case
15 for the proposition as to what single-issue ratemaking is,
16 and the court discussed that and said it's when you set
17 rates just looking at one element of cost of service.

18 But the court also said that's okay if there
19 is statutory authority for that, which they found was
20 lacking in the case of the electric companies.

21 COMMISSIONER LUMPE: I think I also heard the
22 statement that from a policy perspective we can do this.
23 And that may be not a direct quote, but that's what I wrote
24 down. And I agree there are things we can do, but I don't
25 know that it anywhere says that we can use the PGA to do it.

1 MR. SWEARENGEN: Well, the case that I cited
2 to you for the authority that you can is the Missouri Gas
3 Users Association case, which involved a challenge to the
4 PGA, one, and the court said that was lawful. And two, it
5 authorized the incentive program which flowed money back to
6 shareholders, some money back to shareholders. And all
7 we're saying is that that's what's going on here, except the
8 money's not going to shareholders. It's going to customers.

9 COMMISSIONER LUMPE: Did the court not say
10 that the PGA could only be used for gas costs?

11 MR. SWEARENGEN: That's what we're talking
12 about here. These are gas costs, discounts from the gas
13 pipeline. These are gas costs.

14 COMMISSIONER LUMPE: Yes, but they're being
15 used for bad debt, are they not?

16 MR. SWEARENGEN: Through the program, some of
17 the dollars go through the regular PGA, as they normally
18 would, back to the customers, and the rest go in to fund the
19 program. That's correct.

20 COMMISSIONER LUMPE: So that, in effect, it
21 would be going to pay -- these so-called gas costs would
22 also then be extended to pay arrearages; is that correct?

23 MR. PENDERGAST: Chair Lumpe, if I could
24 answer that, these are designed to help customers work off
25 their arrearages. And I'm not going to sit here and pretend

1 to you that that might not have an indirect impact on the
2 level of bad debt expense that the company incurs.

3 In fact, we hope that it will have an impact
4 on the level of bad debt expense that the company incurs on
5 a going-forward basis. Just like changing -- making changes
6 to the Cold Weather Rule can have an impact on the level of
7 bad debts that the company incurs, just like making a PGA
8 rate design change such as the one that wanted to move costs
9 from the summer to the winter back in '94 can have an
10 impact.

11 But I think that just because it has an
12 indirect impact, it's not the same thing as saying, we're
13 now including those costs in the PGA. And the one example I
14 can give you is when MGE's gas incentive mechanism was
15 approved, I think it was back in 1995, it was approved
16 outside the context of a rate case. And when it was
17 approved, they were given the opportunity to keep a certain
18 amount of the revenue that they generated from the
19 procurement of gas supplies.

20 And I don't remember whether it was something
21 that amounted to \$3 or \$4 million, but I could have just as
22 easily come in and said, well, that \$3 or \$4 million, I bet
23 they're going to use that to help defer their bad debt cost
24 or I bet they're going to use that to help cover their
25 advertising expenses or their labor costs or whatever and,

1 therefore, you're including labor cost or bad debt expense
2 or something like that in the PGA. And that wouldn't have
3 been true and that wouldn't have been what you were actually
4 doing there. What are you doing was allowing them to go
5 ahead and keep a portion of those discounts and not pass
6 them through.

7 And just because you're being allowed to go
8 ahead and keep a portion of that or you're being allowed to
9 go ahead and redirect it, to me that is not at all
10 equivalent, just like it wouldn't have been in the MGE case,
11 to saying, we're now including bad debts in the PGA. That's
12 an indirect impact. That is not an inclusion of a cost now
13 in the PGA.

14 COMMISSIONER LUMPE: But you're telling me
15 it's indirect. In other words, you're going to set up an
16 escrow account that's going to sort of be there at
17 \$3 million, but then you're going to use that account to
18 assist people with their arrearages, which is essentially
19 bad debt, isn't it? So you're saying it's indirect. In
20 other words, you're going to put something in a pot here and
21 then you're going to say, now we will use it to do this
22 other thing?

23 MR. PENDERGAST: Yeah. I guess I'm saying
24 that some of it may be bad debt. Some of it may just be
25 arrearage that hasn't gone to bad debt yet. And some of it,

1 as we said during the proceeding, is going to be captured by
2 the tracking mechanism that we had in our rate case as a
3 result of the emergency Cold Weather Rule. And to the
4 extent it offsets any of those costs that we're permitted to
5 track, those will be captured and those will be flowed back
6 or at least impacts of those will be flowed back to
7 customers as a result.

8 But the bottom line is, we don't keep anything
9 for ourselves. It either goes back to the customer through
10 the normal PGA process or it goes to extinguish something
11 that the customer owes right now and that customer has an
12 opportunity to work down his arrearages. Will it have an
13 indirect impact on bad debts? Let's hope it does, because
14 that's the theory behind that program, just like it was the
15 theory behind the MGE program. And when it was approved, an
16 automatic surcharge or a surcharge of 8 cents was imposed on
17 all other residential customers to pay for that.

18 The testimony by the Staff witness in this
19 case said, you know, there was no concern raised about,
20 well, this might reduce bad debts over the interim and,
21 therefore, you're getting recovered twice, once in the rate
22 case and once outside the rate case. There was nothing he
23 said about how it had been taken into account in the rate
24 case. And, quite frankly, I think it's absolutely
25 indistinguishable what happened there.

1 And if you're going to go down this route
2 about you can't make any changes because it might have an
3 indirect impact on bad debts, then you're going to have a
4 high standard to meet if you ever want to make in the Cold
5 Weather Rule. You're going to have a high standard to meet
6 if you want to go ahead and impose other regulatory
7 requirements, because I think every time you'll have to say,
8 is this going to have any financial impact on the company at
9 all, and if so, we can't do it until a rate case.

10 COMMISSIONER LUMPE: I'm still somewhat
11 confused because I -- if the only costs in the PGA are the
12 gas costs and that's a dollar-for-dollar passthrough, which
13 we've always been told, then you're not passing through
14 dollar for dollar, are you? You're setting up some fund
15 here that's going to take care of arrearages, and then
16 you're going to get into prudence issues. And I don't know
17 how you're going to address that, but it just seems to me
18 you've made it a more fuzzy PGA than it needs to be to do
19 prudence and to pass through dollar for dollar.

20 MR. PENDERGAST: Well, and I can understand
21 that concern. And I guess what I would say, aside from the
22 indirect argument that I mentioned, I mean, one thing you
23 have to recognize about these bad debt expenses, I mean,
24 people say it's not a gas cost, you know. It's a base rate
25 cost. Well, what are those bad debts relating to? They're

1 relating, 70 percent of them at least relate to gas costs
2 that the company incurred in order to provide service to a
3 customer that the customer's not able to go ahead and pay.

4 And the only reason that you don't have them
5 strictly included in the PGA is because the PGA says, I'm
6 going to go ahead and reconcile your actual gas costs not
7 with the amount you received from your customers, but the
8 amount that you bill to your customers. Now, is there any
9 legal requirement that says I'm going to reconcile it with
10 the amount you bill to your customers, rather than what you
11 actually collect from your customers? No, there is no legal
12 requirement that says that, but that's how it works.

13 And as a result, anybody that tells you
14 that PGA passes gas costs through to customers on a
15 dollar-for-dollar basis certainly doesn't mean to go ahead
16 and say that means the companies recover those costs on a
17 dollar-for-dollar basis through the PGA, because if the
18 customer doesn't pay it, the PGA pretends that as long as it
19 was billed to them you've gone ahead and recovered it. And
20 you can go ahead and try and recover that gas cost in a rate
21 case.

22 So if there's any mixing and matching going
23 on, it seems to me the current system probably shoves more
24 of those gas costs in the base rates and violates that clean
25 line than anything we'd be proposing to do in this case.

1 COMMISSIONER LUMPE: And those costs are in
2 the rate base, are they not?

3 MR. PENDERGAST: You do have a representative
4 level of costs that are included in the rate base, that's
5 correct.

6 COMMISSIONER LUMPE: Staff, would you like to
7 address my questions about the PGA on the dollar-for-dollar
8 passthrough and only for gas costs?

9 MR. SCHWARZ: Yes, Commissioner, I would. I
10 also like to note for the record that I may be the only
11 person in the room who, prior to the Court of Appeals
12 decision, was confident that the court would uphold the
13 PGA/ACA process.

14 Let's talk a little bit about distinguishing
15 MGE's experimental gas cost recov-- or gas cost incentive
16 mechanism, the EGCIM, and you can address the same thing to
17 Laclede's experimental gas supply incentive program, the
18 GSIP. Both of those programs, as the Court of Appeals
19 noted, actually as to the MGE program, those programs were
20 experiments that were directed to gas costs. That is, the
21 premise that was tested in those experiments was that if you
22 permit shareholders to retain some of the savings that might
23 be captured by increased effort at reducing gas costs that,
24 in fact, the actual gas costs charged to customers would
25 decline. Okay. So that the experiment in those cases was

1 directed toward gas costs.

2 It does not appear that the experiment that
3 we're talking about today is directed toward gas costs.
4 Rather the experiment that Laclede has proposed is to see if
5 some sort of arrearage forgiveness will increase the
6 regularity and sufficiency of customers to pay for their
7 entire gas bill, both margin and gas cost, on a regular
8 basis. It is not -- the experiment itself is not directed
9 to gas costs.

10 With respect to what is and is not included in
11 the PGA, I think that Mr. Pendergast came close to the
12 point, but didn't get it exactly. That is, the PGA and ACA
13 process is designed for the Commission to consider all
14 relevant costs upstream of the city gate. That is, you can
15 isolate costs that are upstream of the city gate,
16 considering them in the PGA/ACA process, and in setting
17 those rates, you will have satisfied the requirement of UCCM
18 to consider all relevant factors.

19 And to the extent that the company has billed
20 its customers for the gas cost, that's the last item in the
21 process that occurs upstream of the city gate. The
22 collection process occurs on the LDC side of the city gate.
23 That is, if you tweak collection processes, if you vary the
24 number and location of service offices where customers can
25 come in and make payments, any number of factors can affect

1 whether or not bills are collected.

2 But as far as the company actually being able
3 to bill customers for the cost of gas that have been
4 incurred, that process is complete when the bill is sent.
5 Everything else is on the other side of the city gate, and
6 is properly considered in a general rate case, and that's
7 precisely where the low-income assistance programs have been
8 considered and funded. And that's appropriate, and that's
9 proper.

10 And to the extent that the Commission is going
11 to take action outside of a general rate case on matters
12 that are on the LDC side of the city gate, it can ensure
13 funding for those mechanisms or the recovery of any costs
14 associated with those experiments through an Accounting
15 Authority Order, which is the appropriate vehicle to do so
16 outside of a rate case.

17 COMMISSIONER LUMPE: Mr. Schwarz, do you agree
18 with Public Counsel that there's no new evidence been
19 presented to us to make us want to have a rehearing?

20 Do you -- have you seen any new evidence?

21 MR. SCHWARZ: Well, there -- there is no new
22 evidence. I mean, evidence ended when the record closed.
23 The record was closed when the parties submitted their
24 brief. And certainly nothing that has been spoken here
25 today and nothing that is contained in the post-decision

1 pleadings of the parties constitutes evidence in the sense
2 of something which can be considered by the Commission as
3 making it more probable or less probable of a fact matter.
4 There is no new evidence on the record.

5 COMMISSIONER LUMPE: Thank you. That's all I
6 have.

7 JUDGE RUTH: Okay. We've been going about
8 90 minutes so we're going to tack a very brief break,
9 five minutes. I'm going to stay here. I'll put the VTEL on
10 pause.

11 Let's start back at five minutes after four.
12 Thank you.

13 (A BREAK WAS TAKEN.)

14 JUDGE RUTH: We took a short break.
15 Commissioner Lumpe had been asking some questions. Do you
16 have some additional ones?

17 Then we'll move to Commissioner Gaw.

18 COMMISSIONER GAW: Thank you, Judge.

19 I want to make sure that I'm -- I think this
20 has been loud and clear, but I want to ask the question
21 anyway. From Staff or Public Counsel's position, is there
22 any proposal that could have been made by Laclede in regard
23 to this program as a part of the PGA that you would have
24 felt would have been approvable by the Commission?

25 I'm asking basically, if what I think I'm

1 hearing is absolutely true, that you think this has to be
2 done in a rate case.

3 MS. SHEMWELL: I do think this has to be done
4 in a rate case. However, I also think we've made the point
5 that had this been filed as a gas supply incentive plan and
6 approved by the Commission as a gas supply incentive plan,
7 then Laclede could have used the savings that it was allowed
8 to retain, whatever came out of that gas supply incentive
9 plan.

10 So as part of the PGA as has been proposed,
11 no. But again, if they filed and asked for a GSIP, that
12 would be a different matter.

13 Doug, do you want to --

14 COMMISSIONER GAW: No. I understand, I think,
15 what you're suggesting to me. Before I delve into that, let
16 me ask Public Counsel to respond.

17 MR. MICHEEL: I would say no. I mean, I don't
18 think so, but I'd have to sit down and think about it.
19 Maybe if the company matched the money or something or there
20 was some way that they were going to flow through or hold in
21 an account somewhere -- and I'm just thinking out loud
22 here -- you know, like a reverse AAO where they held in an
23 account the, you know, the identifiable amount of arrears
24 and that was credited back to customers, or maybe just a
25 straight weatherization thing where it could be proven that

1 just the weatherization funding reduced only gas costs and
2 only gas costs, maybe then -- I could think -- I want to say
3 generally no, but I haven't thought through all the
4 permutations.

5 But with respect to this proposal, I think
6 it's no, but there may be other permutations that could
7 work, and I'd have to think that through.

8 COMMISSIONER GAW: If you were dealing with
9 something in -- that's associated outside of the rate case,
10 how do you get back to the issue of the impact on bad debt
11 and reconciliation of that? Whoever wants to go first.

12 MR. MICHEEL: Well, first of all, I mean, the
13 Office of the Public Counsel has always recommended these
14 type of proposals in a rate case. My recollection, the
15 first time we did it was in 1992 in a Laclede rate case, and
16 they didn't like it and so we got a weatherization proposal
17 instead.

18 Again, like I said, maybe if you lessened the
19 impact with, like, what I call reverse AAO. It's never been
20 done, but where they say, okay, we've identified X savings
21 to uncollectibles and we're going to save that in an
22 account, and when we come in for a rate case we're going to
23 credit that to you, maybe that proposal.

24 COMMISSIONER GAW: Okay. Staff?

25 MS. SHEMWELL: I'm sorry. Could you repeat

1 the question?

2 COMMISSIONER GAW: I'm just asking if you're
3 outside a rate case, if there is some way that you could --
4 you could reconcile -- this isn't exactly the question I
5 asked, but if there's some way you can reconcile the bad
6 debt issue at a later point in time?

7 I think that's what Mr. Micheel is suggesting
8 in a -- in a sense with a reverse AAO or something like
9 that.

10 MS. SHEMWELL: And I think Staff had suggested
11 the AAO was an alternative way to do this outside of a rate
12 case because then the records would be kept and they would,
13 in essence, be then reconciled in the next rate case, what
14 Laclede's expenses have been and had there been any
15 reduction in bad debt, and that would then be reconciled.

16 COMMISSIONER GAW: I'm not sure that Staff and
17 Public Counsel are talking about the same mechanism here
18 with the AAO.

19 MS. SHEMWELL: I agree.

20 COMMISSIONER GAW: Can you describe what
21 you're talking about when you're talking about utilizing an
22 AAO? Can you give me more details?

23 MS. SHEMWELL: I think we're talking about a
24 standard AAO. Steve Rackers I believe had testified on that
25 matter, and Laclede would essentially keep track of its

1 expenses in the AAO, and then that would be dealt with in
2 terms of the costs in the next rate case.

3 COMMISSIONER GAW: You're going to have to
4 give me more detail than that for me to see what you're
5 telling me. Tell me how this would work, this mechanism
6 that you're talking about.

7 MS. SHEMWELL: Shall I call Steve up to --

8 COMMISSIONER GAW: No. If you don't know,
9 that's okay.

10 MS. SHEMWELL: Well, it would just be like any
11 other AAO that Laclede would maintain. They would keep
12 track of their actual expenses that they would incur with
13 this program to be addressed in the next rate case.

14 Staff has suggested that their expenses should
15 be quite low because arrearage forgiveness is a non-cash
16 item. They're not going to get the money anyway. So when
17 they write it off, they could forgive it at the same time or
18 over a period of time.

19 So that the actual expenses to the company
20 should not be that great, and what they would then keep
21 track of are the incremental costs, administrative costs,
22 those sorts of things, contact with customers, brochures,
23 any customer education they did, those sorts of things they
24 can keep track of, and then they would be looked at in the
25 next rate case and then any reductions in bad debt could

1 also be taken into account.

2 COMMISSIONER GAW: Public Counsel, do you want
3 to describe what you were talking about in a little more
4 detail? If it's the same thing, you might just tell me
5 that, too.

6 MR. MICHEEL: Well, let me tell two answers.
7 One, you know, maybe you could do it with what I'll call the
8 traditional AAO. That's not what I was suggesting in
9 response to my question.

10 One of the big problems in my mind with this
11 program and I think the testimony, you know, showed that,
12 the record evidence showed that, the whole purpose of this
13 program is to reduce the company's uncollectible expenses
14 and to help customers who need the help.

15 And part of the problem is, you had a rate
16 case and you had a specific level of uncollectible expenses
17 built into rates. Okay. And then you're going to another
18 proceeding, different case, not a general rate case, into
19 the PGA and you're implementing a program that to be
20 successful, I mean, it's the premise of the program, is
21 going to have a direct effect.

22 I mean, the money gets washed through the cap
23 agency, but it's a direct -- I mean, I view it as a direct
24 effect, but I think that's a quibble about form over
25 substance.

1 And what I'm suggesting for a negative AAO
2 perhaps -- and again, this is 30 seconds of thought -- is
3 that you figure out what the impact is going to be on the
4 company's uncollectible expenses and you set up an AAO or
5 some sort of deferred holding account, and I'm not an
6 accountant, but you set up a deferred account like you do
7 with an AAO, an Account 186 or Account 182.3 under the
8 Uniform System of Accounts, and you follow that money and
9 you say, what's the direct impact of this, and that prevents
10 the double recovery issue and guarantees that there's not
11 going to be any single-issue ratemaking because rates aren't
12 going to be made.

13 And you're going to capture the benefit, if
14 you will, of the program for a future time period, and the
15 company is not going to be able to reap that money as a
16 result of regulatory lag and say, too bad, you know, that's
17 regulatory lag, we get that in our pocket.

18 COMMISSIONER GAW: So, in essence, what you're
19 talking about is, and I'm -- my assumption with this
20 question is you get over -- if you were to get over other
21 hurdles that we're all acknowledging at least arguably are
22 out there.

23 So you would be suggesting, then, in that kind
24 of a proposal, that you would be -- they might -- they might
25 be utilizing some of a certain amount of money in savings,

1 whatever that is, but that there would be a balancing, then,
2 at the end of the period when you get to your next rate case
3 as a result of the accounting and this sort of a reverse or
4 negative AAO?

5 MR. MICHEEL: Right.

6 COMMISSIONER GAW: I don't know if that's a
7 new term that's --

8 MR. MICHEEL: I've thought about recommending
9 a lot of negative or reverse AAOs, getting some windfalls.
10 But I guess the goal would be, Commissioner, to make it
11 revenue neutral.

12 COMMISSIONER GAW: Yes.

13 MR. MICHEEL: And that's the goal, and that's
14 the whole concept that I'm espousing, and that's what I'm
15 trying to say here. And I think if it was revenue neutral,
16 if there was a way to do that and I talked to the
17 accountants and the economists and the people that really
18 know a little more than me, that might be something that we
19 would entertain.

20 COMMISSIONER GAW: Yeah. I might ask Laclede
21 if they have any response to that. I realize I'm way
22 probably outside the scope of what's in front of us, but I
23 think we're outside the scope of what's filed.

24 MR. PENDERGAST: Thank you, Commissioner.
25 Yeah, just a few comments, if I could.

1 And specifically as far as Doug's suggestion
2 over here, I wouldn't pretend to be far enough along the
3 line of understanding the accounting to really be able to go
4 ahead and give you an intelligent response at this time.

5 But it does appear to me that there were a
6 couple of things said in response to you that I do think
7 raise a couple of questions and a couple of items for your
8 consideration.

9 And one of them, I think you were told when
10 you asked, asking whether there was any way this thing could
11 have been funded through the PGA, I think Ms. Shemwell
12 indicated, well, it had been filed as a GSIP. That would
13 have been a legal basis for funding it.

14 And to borrow a book out of Doug's Alice in
15 Wonderland, you know, we sort of feel like we've ventured
16 into that territory, too, because as you will recall and I
17 think as Mr. Micheel even said, when we initially filed
18 this, we did have an incentive piece of 10 percent that was
19 going to go directly to the company's bottom line, and that
20 caused some real concern among Staff and Public Counsel.

21 And so, you know, trying to get this program
22 approved, we said, okay, we'll do away with that and we'll
23 say that the whole 30 percent goes to low-income customers.
24 So everything is filed through -- flowed through.

25 And then the response to that was, well, if

1 you'd only filed this as an incentive mechanism, then maybe
2 you'd have a chance at getting this thing approved, but it's
3 not an incentive mechanism.

4 Well, in fact, it is an incentive mechanism.
5 Everybody's sitting here concerned about the fact we might
6 go ahead and have a little bit of financial benefit between
7 rate cases, and the only way that financial benefit occurs
8 is, No. 1, if we can generate funding from pipeline
9 discounts and maintain those pipeline discounts in order to
10 fund the program.

11 And I can't begin to tell you how broad this
12 Commission's authority is to go ahead and approve gas cost
13 incentive mechanisms with various kinds of percentages. I
14 mean, it's approved them with utilities being allowed to
15 keep 10 percent, 20 percent, 30 percent, 40 percent,
16 50 percent. It's gone ahead and approved them with and
17 without baselines. It's approved them by saying you get to
18 collect from dollar one.

19 Sometimes it's been something different than
20 that. But the underlying theory has been, if you have a
21 financial stake in it, even if it's an indirect one, then it
22 provides you with an incentive to do something good on the
23 gas cost side.

24 And I think that this does provide that kind
25 of at least indirect incentive, and I think it's something

1 that's squarely within your authority to go ahead and
2 approve on that basis.

3 COMMISSIONER GAW: I might just for sake of
4 curiosity, Mr. Pendergast, ask if in the realm of GSIPs and
5 incentive programs that have been approved in the past, if
6 there's ever one been approved without subsequent
7 controversy? You don't need to answer that question.

8 MR. PENDERGAST: Well, I'm glad I don't have
9 to. It might take me a while to figure out which one that
10 was.

11 COMMISSIONER GAW: Let's see. I recognize
12 this as not being an issue that was really directly utilized
13 in the decision, but it was addressed in comments.

14 I'm curious about whether -- if anyone -- and
15 I think I've already -- I think Mr. Swearengen already
16 addressed this, but there is no interpretation of section --
17 of the section dealing with different rates and rebates, et
18 cetera. Let's see. That was 393 -- 393.130(2) and maybe
19 even 3, but sub 2 particularly.

20 So no cases on that other than at the
21 commission level?

22 MR. SWEARENGEN: There are a lot of cases
23 where that statute is cited and will turn up, but the point
24 I was trying to make is I'm not aware of any instance in
25 which 393.130 subsection 2 has been used as a basis to

1 overturn something that this Commission has done.

2 COMMISSIONER GAW: It's been utilized as --
3 does anyone disagree with that?

4 MR. MICHEEL: I'll have to look back at my
5 brief in the MGE case, but I seem to recall that there may
6 have been one case that I thought was on point, at least.
7 And I'd have to look, but somehow the Depaul Telephone case
8 is coming to mind, but I'd have to go back and look.

9 COMMISSIONER GAW: I think the Commission
10 expressed some discomfort about the possibility of that
11 being utilized as an argument, and perhaps any guidance that
12 you might have on that since it's slightly not just to be an
13 issue in this case as it in other cases that may or may not
14 have stippled out or cases in the future, that would be
15 helpful if anyone wants to -- if you find something that's
16 worthwhile to provide.

17 I think that may be -- let me ask Staff this
18 question: If the company had come in with a proposal to --
19 where they suggested that they were going to change and be
20 able to increase the amount of the discount from what
21 currently is the case, or at least appears to be the case on
22 the pipeline discount, and increase and then suggested that
23 that amount would be utilized for this discount program,
24 would that have changed Staff's position in any way on this
25 case?

1 MR. SCHWARZ: Yes, I think it would have.
2 That is, if there -- if there had been a true incentive plan
3 to reduce gas costs and the company had proposed to dispose
4 of its incentive portion to assist low-income customers,
5 Staff I don't believe would have had any opposition to that.

6 I think that the Staff's position in
7 GT-2001-329, which was when Laclede sought to extend the
8 GSIP, I think the Commission can go back and look at those
9 arguments as to what's an appropriate structure for an
10 incentive plan, and something structured along those lines
11 would be appropriate.

12 MS. SHEMWELL: Let me just add one thing.
13 Staff has certainly -- that would be Laclede's money, then,
14 that they could do with as they choose. The idea behind gas
15 supply incentive plans was that gas costs would actually be
16 reduced, and that Laclede would then share in that reduction
17 in costs. You've got a level, and if they can do better
18 than that and increase the discounts, then they got to share
19 in that better performance.

20 COMMISSIONER GAW: Let me ask you this: What
21 happens if they do that now? Do they get -- what are
22 talking about, 30 percent? Is that the 30 percent discount?

23 MS. SHEMWELL: They were proposing to keep --

24 COMMISSIONER GAW: I'm not talking about
25 what's being proposed. I'm talking about what's currently

1 the case. I can't remember.

2 MR. SCHWARZ: Well --

3 MR. MICHEEL: Commissioner, currently, okay,
4 with respect to the GSIP that Laclede has, there is -- there
5 is no pipeline discount component in that GSIP.

6 COMMISSIONER GAW: That's my recollection.
7 And what I'm asking is, without that being built in, do you
8 recall what the amount of the discount is, approximately, or
9 if there's -- that was my first question, and I can ask
10 Laclede easier. I thought there was a pretty clear record
11 on that.

12 MS. SHEMWELL: What the current discounts are?

13 COMMISSIONER GAW: Yes.

14 MR. PENDERGAST: Your Honor, they're in excess
15 of \$20 million right now.

16 COMMISSIONER GAW: All right. And if they --
17 if their discounts, if they negotiated better discounts
18 under the current rate case that's in effect, that would all
19 flow through to customers, right? There's not any of that
20 that goes back to the shareholders; is that correct?

21 MR. MICHEEL: That's correct. Under the
22 current GSIP, pipeline discounts are out. Although I would
23 point out, the Commission's underlying GSIP decision is
24 still on appeal about that issue, your Honor, and so that's
25 still something that's in controversy.

1 COMMISSIONER GAW: Thank you for pointing that
2 out.

3 But I guess what I'm getting to here is, I'm
4 trying to understand what Staff was just telling me, that if
5 they got a better deal and they came in and said, we want to
6 do this, make this proposal with the additional savings,
7 you-all are saying that you would go -- you think that that
8 might be okay in that instance? Is that --

9 MR. SCHWARZ: If there -- if there were a
10 proposal that Staff viewed as a true incentive plan to
11 secure, for instance, lower transportation costs by
12 discounts from FERC maximum rates, that is something in
13 excess of what Laclede was getting in 1995, yes, Staff might
14 view that as something that it would be appropriate for
15 Laclede to devote its proceeds from such a plan to assist
16 low-income customers.

17 MS. SHEMWELL: Again, if Laclede has proceeds,
18 they can do whatever they want with them. If they come in
19 with a properly designed gas supply incentive plan and file
20 that tariff with the Commission and the Commission approves
21 it, then whatever savings -- because they've achieved
22 greater savings for customers, whatever they're allowed to
23 retain, they can do whatever they want with that. That is
24 part of the incentive.

25 COMMISSIONER GAW: And you think they can do

1 that outside of a rate case and as a part of their PGA?

2 MS. SHEMWELL: They can file an incentive plan
3 outside of a rate case, because it has to do with
4 transportation costs, right, gas transportation costs, and
5 they can file -- again, it's on appeal. The GSIP and the
6 Commission's decision is on appeal. But if they file a GSIP
7 and the Commission agrees that it's probably designed, then
8 yes.

9 The whole idea is again that gas costs will be
10 reduced, and it's very directly related to gas costs, but
11 then they can do with their share whatever they want.

12 COMMISSIONER GAW: I guess, then, that begs
13 the question to me about what's the difference between that
14 and proposing that current savings that they're -- that
15 they're receiving be treated in some similar way other than
16 this starting point? On principle, how do you make the
17 distinction?

18 MR. SCHWARZ: Well, how do you define
19 incentive? What is an incentive plan? The proposal -- as
20 far as transportation discounts is concerned, the proposal
21 that Laclede was operating under during the period of the
22 GSIP did not generate any additional discounts to --
23 certainly significant discounts to reduce gas costs from
24 what they had been prior to the incentive plan.

25 So if the purpose of an incentive plan is to

1 generate additional benefit, I think the gist of the
2 Commission's decision in the 2001-329 case was that the plan
3 that Laclede was operating under didn't generate any
4 additional reductions in gas costs.

5 Now, if -- if that position has changed, if
6 incentive has a different meaning now than it did then, back
7 to Alice in Wonderland, the word means exactly what I say it
8 means and nothing more and nothing less, said the Cheshire
9 Cat.

10 COMMISSIONER GAW: Let me ask you this: If
11 you have that presumption that it's all about the starting
12 point, then, and the Staff would agree that you achieved
13 over a certain amount of savings in a particular year, that
14 it would be appropriate for some percentage of that to be
15 utilized for some purpose, and if that -- if that is the
16 case, how can you go beyond one year without having to
17 ratchet it up every year in order to continue to meet the
18 requirement that you're setting up that it be under the
19 definition of incentive?

20 MR. SCHWARZ: That's the hard part, and --

21 COMMISSIONER GAW: It is the hard part in
22 understanding that analysis.

23 MR. SCHWARZ: And in the GSIP proceedings, the
24 Staff suggestion was that you do it on a -- on a relative
25 basis from year to year. That is, you rank -- my gas costs

1 went down this much, everybody else's costs went down
2 different percentages, and you rank them on the basis that
3 market conditions, general market conditions and the general
4 transportation available to each LDC probably doesn't vary
5 much from year to year.

6 So that if you -- if you look at the annual
7 changes and compare them to what everybody else is doing,
8 then you get perhaps a measure of the effort of the company
9 in keeping gas costs down.

10 COMMISSIONER GAW: Mr. Micheel, do you have a
11 different analysis you'd like to offer?

12 MR. MICHEEL: Well, let me make sure that I've
13 got the facts down.

14 COMMISSIONER GAW: I'm not sure what they are
15 right now, but go ahead.

16 MR. MICHEEL: I'm sorry. I was -- the facts
17 are, you have some incentive plan and then we don't care
18 what they do with the money, right?

19 COMMISSIONER GAW: I guess what I'm asking is,
20 if -- and I was really directing that at Staff's analysis so
21 I could understand what -- where the principle was in the
22 argument.

23 But what I'm asking is whether or not Public
24 Counsel in this case believes that it would be appropriate,
25 if there was additional savings generated over what's

1 currently being generated with the discounts that Laclede
2 has and they came in and said we're going to be able to get
3 some additional savings and we want to do basically what
4 they're doing in this proposal that they -- that they have
5 not in front us.

6 MR. MICHEEL: I mean --

7 COMMISSIONER GAW: And I want to know whether
8 or not that makes any difference to Public Counsel's
9 position.

10 MR. MICHEEL: I don't think that it does
11 necessarily, Commissioner, because the problem still remains
12 that you're taking costs that we're supposed to be reducing
13 gas costs and you're taking in our view costs, reducing
14 costs on the non-gas side where if the program's going to
15 work there's going to be some financial benefit to both the
16 customers and the company, and that's a problem.

17 And that's still a problem whether you say,
18 look, the company's been getting 20 million consistently of
19 pipeline discounts, now they've worked and they're getting
20 25 million, so does it make it okay that they take that
21 5 million and do this?

22 And I guess I would say to you that same
23 problem still presents itself despite the fact --

24 COMMISSIONER GAW: You're still outside of a
25 rate case?

1 MR. MICHEEL: Yes. If you're -- in this case,
2 as their proposal is to link those two together, that's the
3 proposal that we're analyzing here. They're linking the two
4 together. They're intertwining and impermissibly, in my
5 view, mixing them.

6 COMMISSIONER GAW: Go ahead, Mr. Pendergast.

7 MR. PENDERGAST: Thank you. If I could be
8 permitted to respond just briefly. I think that's the good
9 thing about these oral arguments. Sometimes you really do
10 get down to the issue.

11 And I think it's an outstanding observation
12 that if it's lawful to do it under what Staff deems to be a
13 properly designed incentive plan, which is all about
14 starting points, then -- then why isn't it within the
15 Commission's discretion to determine what that appropriate
16 starting point should be?

17 And what I can tell you what the law says
18 about that starting point is that the courts have not gone
19 ahead and said it has to be some exact historical benchmark
20 that you use.

21 In fact, the gas procurement one that was
22 approved in the MGE case and upheld by the Western District
23 Court of Appeals had a range between what the historical or
24 the current index price was, and I think it was 2 percent or
25 3 percent on either side.

1 Plus that same incentive mechanism had a
2 capacity release feature where MGE was permitted to go ahead
3 and retain a portion of its capacity release revenues from
4 dollar one without any benchmark whatsoever.

5 When MGE -- or when Laclede's incentive
6 program was first approved, it was something where we got
7 between 10 or 20 percent of pipeline discounts without any
8 historical level built in, and that was in effect, I
9 believe, for three years. Later we put a \$13 million
10 baseline in it.

11 MGE I think had a pipeline discount, one that
12 didn't have any historical level built in. I think AmerenUE
13 had one that didn't have a historical benchmark level built
14 in. And as I said, some have been for 20 percent, some have
15 been for 30 percent, some have been for 40 percent.

16 The thing is the Commission, I think, has a
17 significant amount of discretion to determine how it wants
18 to provide those incentives, and I think the courts have
19 gone ahead and upheld the fact that the Commission has a
20 significant amount of discretion.

21 And when it comes to the starting point, you
22 know, really the big dispute that's been -- and Mr. Schwarz,
23 I think, kind of got to it a little bit -- is that -- and I
24 think your question did, too -- is that if you sit there and
25 you assume you always have to do better than your historical

1 benchmark, well, pretty soon you won't have any incentive
2 else you've gotten rid of our all pipeline charges and
3 you're not paying anything.

4 And sometimes just being able to maintain the
5 level you have in a changed capacity environment can be a
6 sign of success. And that's -- that's the theory that
7 justifies saying I'm going to give you a 10 percent or
8 15 percent and I'm going to trust that that incentive is
9 going to go ahead and have a beneficial effect on you going
10 out there, using leverage, using whatever kind of techniques
11 you have to try to maximize those discounts.

12 And if you choose, instead of taking those to
13 the bottom line, to go ahead and give them to your poorest
14 customers to go ahead and help them with their utility
15 bills, I'm relatively confident that no court in Missouri is
16 going to come in and say, because they're no longer going to
17 the utility's bottom line, that they're going to go ahead
18 and go to poor customers, that something that was
19 permissible before has suddenly become impermissible.

20 I don't think the statutes in Missouri were
21 ever written to say if they're used for that kind of
22 beneficial purpose, that something that was permissible has
23 suddenly become impermissible.

24 COMMISSIONER GAW: If you want to respond, go
25 ahead.

1 MR. MICHEEL: Just one quick comment to that.
2 I think, though, that if the program's to work, it does go
3 to the company's bottom line and it gives them an
4 opportunity to, you know, reduce their uncollectible
5 expenses, you know.

6 And if we use traditional ratemaking, to the
7 extent that they have an uncollectible expense built into
8 their rates at \$10 million and because of this program
9 they're only experiencing \$8 million, if we don't have a
10 negative AAO or something in there that captures that, it's
11 not revenue neutral anymore, and that's in my view where the
12 problem comes in.

13 Then, you know, as a result of this program,
14 you know, you're changing the ratemaking structure on that
15 side.

16 COMMISSIONER GAW: Mr. Molteni, is there -- is
17 there anything that you would like to add?

18 MR. MOLTENI: Absolutely nothing,
19 Commissioner.

20 COMMISSIONER GAW: I just wanted to give you
21 the opportunity. I do want to thank you for being part of
22 this process and making sure that the weatherization matter
23 was brought into the discussion and debated. I appreciate
24 that.

25 MR. MOLTENI: Appreciate the opportunity.

1 COMMISSIONER GAW: And that's all I have.
2 JUDGE RUTH: Commissioner Forbis.
3 COMMISSIONER FORBIS: Okay. Let's see.
4 You're all staring at the PSC seal. I'm staring at the
5 clock on the back wall. Perhaps we can move the hands on
6 the bear. Are there bears in Alice in Wonderland? I know
7 there's cats, there's --
8 MR. MICHEEL: Cats and rabbits and
9 caterpillars, but I'm not aware of the bear.
10 COMMISSIONER FORBIS: No bears.
11 Two questions, I think, directed at Laclede
12 just briefly. First one would be -- some of this stuff may
13 have been covered -- what you're calling a negative AAO or
14 what have you, one of the con-- a prime concern with the
15 negative AAO concept seems to be that historically you have
16 not seen the funding through the AAO that you would -- that
17 you think it should be.
18 Is that -- is that historical concern your
19 only problem or are there other issues with using an AAO to
20 perhaps try to resolve this at some point or come up with
21 something new?
22 MR. PENDERGAST: If I could respond to that.
23 I think that's part of the concern. There's two of them.
24 One, that obviously, you know, to the extent there are some
25 cash requirements associated with the program, AAO doesn't

1 generate any cash and it doesn't bring any real dollars in
2 to go ahead and fund it.

3 And then the second thing is that even to the
4 extent that costs are deferred and for eventual recovery in
5 a rate case, you know, our experience has been, as
6 Mr. Swearengen indicated in his opening comments, that
7 because of the length of time over which recovery is
8 stretched, because of the fact that typically they're not
9 included in rate base, and because of some tax offsets that
10 are done to the amounts that have been deferred, you really
11 wind up recovering less than 50 cents and sometimes
12 significantly less than 50 cents on a present value basis of
13 what you -- what you went ahead and expended.

14 That's not true for all AAOs, but certainly
15 that's been the general experience that we've had on most of
16 the AAOs we've had with the Commission. So I think it would
17 be those two things.

18 COMMISSIONER FORBIS: If you want to go with
19 the argument that some of the risks should be shared, if you
20 will, between the ratepayers and the company and it's
21 50 percent recovery, then we start to get there?

22 MR. PENDERGAST: Well, I think if you're -- if
23 you're talking -- well, first of all, you're talking about
24 50 percent recovery.

25 COMMISSIONER FORBIS: It's the number you

1 threw out.

2 MR. PENDERGAST: Right. And then you're
3 talking about it somehow being taken into consideration in
4 the next rate case, and we've indicated that this should be
5 taken into consideration in the next rate case and be used
6 to go ahead and establish what your bad debt levels are in
7 the future.

8 And I don't know to the extent whether you
9 would wind up paying for it twice, once when you fund it up
10 front and then again when you recognize the benefits that it
11 produced on a rate case basis on a going forward basis.

12 And I guess thirdly, you know, it really
13 doesn't from our perspective address the cash flow aspects.
14 And, you know, we were talking about if there was a
15 \$3 million program, we talked if there was a 6 million, we
16 anticipate maybe a 2 to 3 million reduction, meaning there
17 would be probably a net cost of about 3 million there. Even
18 at 3 million you're talking about a one and a half million
19 dollar cost.

20 COMMISSIONER FORBIS: Which the company is, of
21 course, not totally excited about, understandably.

22 MR. PENDERGAST: That's true. And it really
23 does get back, you know, if we were in a position where we
24 weren't already contributing a significant amount to this,
25 and I -- you know, I don't think anybody's ever come up and

1 disputed that we do do things that cost the company money,
2 and significant money, not -- much of it that's not
3 recognized in rates, in order to keep customers on service.

4 And I don't want you to have the impression
5 that we're not already into this, that we haven't already
6 put something into the -- into the -- into this by way of a
7 contribution. I think we do that every day when we let a
8 customer get back on the system and we let them get back on
9 the system for less than what we'd be required to do under
10 the Cold Weather Rule.

11 COMMISSIONER FORBIS: Staff or OPC want to
12 comment?

13 MR. MICHEEL: At the risk of dragging it out,
14 and I don't want to delay it too long, but we've heard a lot
15 of bad things about the AAO, and it only allows them to
16 recover 50 percent of the costs deferred and all of those
17 parade of horrors.

18 But the fact of the matter is, if we were
19 using traditional ratemaking as opposed to granting a
20 company the AAO, the company would be getting buckeye,
21 nothing, zero.

22 So, you know, I appreciate those arguments,
23 but I just want to make sure the Commission's aware that
24 because they get an AAO, that is something that
25 traditionally, if we've just using straight, you know, cost

1 of service ratemaking, rate of -- cost of service rate of
2 return ratemaking, the companies wouldn't be recovering.

3 So AAOs are beneficial to the companies.
4 That's all I want to say.

5 COMMISSIONER FORBIS: I'll apologize to the
6 State of Ohio on your behalf later on.

7 The only other comment -- the only other
8 question I had was -- thank you, by the way -- 393.130, the
9 issue about discrimination, if you will, within class, this
10 is -- I use the term loosely -- a defense, if you will,
11 against that as an argument was it hasn't been used before.

12 Is there a better defense against that
13 argument than that? And I'll ask Laclede that first.

14 MR. PENDERGAST: As far as the legality
15 issues?

16 COMMISSIONER FORBIS: Right, because the
17 language is no special rate, rebate, drawback or other
18 device or method, charge, demand, so on and so forth. It
19 covers the entire gamut of not just rates.

20 And while we may not have been -- while
21 decisions may not have been challenged on that before, given
22 the fervor of opinion about this particular process, I'm not
23 sure we can say that this time, and I'm wondering if there
24 are other, if you will, defenses?

25 MR. PENDERGAST: Yeah. I think the comfort

1 you can have in that sort of thing ultimately being
2 sustained, and obviously the record was clear and you heard
3 today that there are already plenty of programs that provide
4 different amounts of financial assistance, whether it be the
5 low income assistance program we have, weatherization
6 program that MGE has, whether it be their low-income
7 program, Empire's program, that already do that, but that's
8 not a direct answer to --

9 COMMISSIONER FORBIS: So those were done
10 through rate cases generally, stipulations, what have you?

11 MR. PENDERGAST: Rate cases and stipulations.
12 But what I will tell you is that this has the additional
13 legal justification of being funded through an incentive
14 mechanism that the courts have upheld that those other
15 programs did not have the legal justification for. They
16 were simply a straight-out increase in base rates of other
17 customers.

18 And so if you're concerned about an unlawful
19 subsidy or an unlawful change in rates, I think that's a
20 concern that would be more applicable to those than these.

21 And the second thing would be, the theory
22 behind this, just like the theory behind the MGE program, is
23 that ultimately this is going to benefit all customers, and,
24 as a result, providing an opportunity to work off those
25 reductions for certain customers is appropriate because all

1 customers will benefit in the end.

2 And what I can tell you, Commissioner, is that
3 this Commission has gone ahead, for example, and approved
4 flex tariffs under which utilities are allowed to go out and
5 offer different rates, lower rates to customers in order to
6 go ahead and keep them on the system because they have
7 competitive alternatives.

8 And the theory behind that is, yes, you're no
9 different than the other manufacturing company next door or
10 down the street, but I'm going to give you a special rate
11 because I know I may lose you if I don't give you that
12 special rate or that discounted rate, and it's important to
13 my other customers to go ahead and keep you on the system,
14 so I'm going to offer you that.

15 The Commission's approved economic development
16 rates which have gone ahead and given special rates to
17 certain kinds of customers because, once again, it's
18 important to attract customers to the system. Everybody
19 benefits from it. And the Commission's recognized that that
20 justifies that different kind of treatment.

21 And all I would say is that what's good for
22 the big manufacturer, what's good for the company that you
23 want to go ahead and attract, if there's a draw between that
24 and benefits for other customers, which I think you can
25 conclude on the record in this case there was, then it's

1 good enough for a low-income customer who you want to change
2 his behavior and you want to have him pay arrearages in a
3 more consistent fashion or pay his current bill in a more
4 consistent fashion to benefit everybody.

5 COMMISSIONER FORBIS: Interest of fairness
6 again, anybody want to make a statement? Staff?

7 MR. SCHWARZ: I think that in each of the
8 alternate examples that Laclede has cited, there are --
9 well, first of all, the experimental plans and so forth have
10 all been done in the context of a rate case revenue
11 requirement situation where the parties can evaluate if the
12 design is going to ultimately generate more than it cost.

13 Okay. And that's what an incentive feature in
14 a gas supply plan should take into account, too. That is,
15 is the incentive plan going to generate more benefits than
16 it costs? And that's irrespective of what the proceeds are
17 devoted to. That is, the nature of the beast is does it
18 cost more -- or rather does it save more than it costs?

19 In the setting of rate case settlements, the
20 parties are free to hammer out and resolve those and make
21 their recommendations to the Commission. The same holds
22 true on a gas supply incentive plan. The parties have not
23 been able to reach an agreement, and I think with respect to
24 the questions that Commissioner Gaw has as to where you
25 start and how do you do, that's the reason why.

1 The ability to flex has conditions on it, has
2 limitations on it, and the rate implications are considered
3 in the next rate case as far as that goes.

4 And it gets us back to the beginning of this
5 whole discussion, which is that the objectives and goals of
6 helping low-income customers become regular paying
7 customers, regular customers of the utility is a good one.
8 It has benefits to all of the other ratepayers.

9 The question is, how do you lawfully fund it?
10 And I would suggest to you that you need to be wary of
11 suggestions that, well, it may or may not be lawful, but
12 you're not going to be challenged on it. That's -- that's
13 not a sufficient basis for making a decision. I think you
14 have to be convinced that what you do is lawful and proper
15 and outside of a rate case.

16 As far as general rates are concerned, I think
17 AAO is the funding. And I think that with respect to the
18 PGA, if you're talking about an actual incentive plan, that
19 it needs to be just that. It needs to be an incentive plan.

20 Now, as I noted earlier, the Commission can
21 change the definition of incentive to mean the status quo,
22 but I'm not sure that that's -- certainly that's not
23 consistent with the Commission's decision in the GT-2001-329
24 case, and I don't think it's good public policy.

25 MR. MICHEEL: Commissioner, I would just echo

1 what Mr. Schwarz said. All of the examples brought forth by
2 Mr. Pendergast occurred in a rate case. And let me make it
3 clear, and it says it in Public Counsel's brief, I mean, I
4 think on the analysis that the Commission did in this case,
5 you got it right, because this is the PGA.

6 But the Public Counsel stands ready to begin,
7 you know, a collaborative process tomorrow -- well, I don't
8 know if Ms. Meisenheimer's available tomorrow, but as soon
9 as practically possible to do this so we can have a program
10 that we can present in the context of Laclede Gas Company's
11 next general rate case.

12 And with respect to the MGE program, I mean, I
13 was the attorney that did that and I hired our outside
14 consultant, and I can tell you, there was consideration
15 given to the company's uncollectible costs as it related to
16 how the program impacted those. Now, it's not specifically
17 spelled out in the Stipulation & Agreement, but that's
18 because we all agreed to it.

19 And in the context of the rate case, the
20 Office of the Public Counsel would be prepared to do
21 programs like this. Indeed, I would say that we've been
22 since the early 1990s recommending programs like this, and
23 we continue to do so. And I would assume the same thing --
24 and I wasn't involved in the Empire case settlement, but I
25 would assume there was some consideration given in the

1 Empire case.

2 But the distinction is the rate case
3 distinction, and so I think that the Commission's Report and
4 Order here is on sound ground and well thought out and
5 shouldn't be changed.

6 MR. SWEARENGEN: Commissioner Forbis, you
7 started this inquiry about -- with a reference to 393.130,
8 and there was some question about cases under that section.
9 We'd be more than happy, if you think it's helpful, to file
10 a short memorandum just dealing with that question and this
11 particular statute, because it does seem to be of some
12 interest to you. I know Commissioner Gaw asked some
13 questions about it earlier.

14 And we don't think there are any decisions, as
15 I indicated, under that subsection 2 that have been used to
16 upset Commission decisions. Mr. Micheel thinks there may be
17 one, and we'd be more than happy to take a look at that and
18 supply some of that. Thank you.

19 COMMISSIONER FORBIS: Sure.

20 JUDGE RUTH: So you would file a brief
21 pleading or notice answering that question within the next
22 couple of days?

23 MR. SWEARENGEN: Sure. Be glad to.

24 JUDGE RUTH: And limiting the response to that
25 question?

1 MR. SWEARENGEN: Just to this statute, right.

2 COMMISSIONER FORBIS: That would be fine.

3 MR. SWEARENGEN: Okay. Thank you.

4 JUDGE RUTH: When we finish up, we'll set a

5 definite deadline for that.

6 COMMISSIONER FORBIS: Thank you for your

7 offer. That's my questions.

8 JUDGE RUTH: I know we still need to do the

9 reply arguments, but I have a quick question, or at least I

10 want a quick answer.

11 In the beginning Mr. Swearengen talked about

12 how this program is similar to the MGE and the Empire

13 programs, and I believe he made the comment, and I'm

14 paraphrasing, that the legal arguments that could be made

15 against the current program could have been made against the

16 previous program also.

17 So I want to follow that up just a little bit,

18 and I know it's been touched upon, but I want to

19 specifically ask Staff and Public Counsel if that MGE

20 settlement, which I realize was done in the context of a

21 rate case and was a settlement, but how does that not

22 violate the same concerns of 393.130? Is it simply because

23 it was in a rate case settlement?

24 MR. SCHWARZ: I think not. I think first of

25 all that it's considered an experiment, that is -- and the

1 Commission's authority for experiment goes way back to the
2 '30s and '40s. I think the Hessy case is one of the early
3 ones that -- where the courts approved experimental
4 programs.

5 So I think that in that context it is an
6 experiment that has to do with elements that are considered
7 in a general rate case. There's no question about
8 single-issue ratemaking, anything of that nature. And the
9 premise of the experiment is that by adopting the terms and
10 conditions of the experiment, you will, in fact, reduce the
11 costs of the other ratepayers.

12 And those are things, as Mr. Micheel alluded
13 to earlier, that were discussed in reaching the settlement
14 that implemented the MGE experiment. So that the -- the
15 premise is that in -- the overall revenue requirement of the
16 company is less because of this particular program.

17 So I think that's the distinction that can be
18 made as far as general rates and drawbacks and whatever the
19 litany is in 393.130.

20 JUDGE RUTH: Public Counsel, did you want to
21 respond?

22 MR. MICHEEL: I do, your Honor. I would have
23 a two-pronged response. First is, I agree with Mr. Schwarz
24 that that's an experimental rate done in a rate case where
25 we're looking at all factors.

1 Secondly, I think if you'll look at
2 Mr. Colton's underlying testimony there, he made the
3 argument that low-income customers because of their
4 characteristics of usage and how they're served can be
5 treated as a separate class of customers. And then once you
6 get a separate class of customers, then you don't have the
7 problem with 393.130.

8 Now, I'm the first one to tell you, because we
9 settled that case, we did not reach that issue, but that
10 certainly was our litigation position, and along with the
11 experiment. But, I mean, because we settled, I think we all
12 decided that we've come to agreement, we're not going to
13 fight that fight, but I will tell you that was our
14 litigation position, my recollection.

15 JUDGE RUTH: Laclede, did you have something
16 else you wanted to add on that particular question?

17 MR. SWEARENGEN: The only thing I would say
18 briefly is just reiterate what I said earlier, and that is
19 we reject the notion that what's going on here is
20 ratemaking. Rates are not changing. And if rates are not
21 changing, and they're not, you can't have single-issue
22 ratemaking.

23 And you're not -- if you don't have
24 single-issue ratemaking, you eliminate this entire problem
25 about whether or not you can do this outside the context of

1 a general rate case.

2 And I don't think there can be any real
3 argument about that. There may be some economic benefit to
4 the company, but rates are not changing. This is not
5 single-issue ratemaking as defined by the Supreme Court. If
6 anything, you're dealing with a purchased gas adjustment
7 clause which the courts have said you can do outside the
8 context of a rate case.

9 It's a rate design change, if anything, which
10 this Commission has dealt with outside the context of a rate
11 case. So I don't think you even get to that question.

12 JUDGE RUTH: Any other questions from the
13 Bench? Okay. That will conclude the questions from the
14 Bench.

15 When we started, I told the parties we were
16 following CSR 240-2.140 paragraph 3, limiting public -- I'm
17 sorry -- limiting Laclede to approximately 30 minutes and
18 the other parties to 15 minutes each. According to my
19 notes, Laclede would only have a minute or two left for some
20 reply arguments, and Staff and Public Counsel would each
21 have a bit more. Staff would have about six minutes, Public
22 Counsel three, and DNR has quite a bit of time left, 13 or
23 14 minutes at least if you want.

24 I want to go ahead and at least try and start
25 these oral arguments, but if it looks like we're going to go

1 much past five, I'm going to start this back up tomorrow at
2 eight o'clock before the other Laclede hearing starts. The
3 other option is if all the parties agree that you don't want
4 your reply arguments, we can skip that.

5 MR. SWEARENGEN: I think just about everything
6 has been said here. I would like to say just -- make one
7 final point and then I will be quiet, and I'll get
8 Mr. Pendergast to be quiet.

9 (Laughter.)

10 And that is, we are asking the Commission to
11 make a decision, make a policy decision. We think you have
12 the legal authority to do it. We want you to make a policy
13 decision based on the alternative proposal that we have
14 filed and put in front of you, and that's really all we're
15 asking you to do by our Motion for Reconsideration and
16 Application for Rehearing. We think you can certainly do
17 that.

18 And with that, I will conclude my comments and
19 thank you.

20 JUDGE RUTH: So you would agree to waive your
21 reply comments if the other parties do?

22 MR. SWEARENGEN: Yes. Thank you.

23 JUDGE RUTH: Can I hear from the other
24 parties, please? Staff?

25 MS. SHEMWELL: I just would like to respond to

1 what he just said, and that is that there really is nothing
2 before the Commission at this time to decide in terms of
3 policy, and that the Commission did get it right in its
4 Order and it should stick with its decision in that Order,
5 and that's all I have. We'll waive any further comment.

6 JUDGE RUTH: Public Counsel?

7 MR. MICHEEL: I'm sure I could drone on for a
8 few more minutes, but I'm not going to.

9 JUDGE RUTH: And DNR?

10 MR. MOLTENI: No further comments.

11 JUDGE RUTH: Then thank you. While we're on
12 the record, I want to mention, then, this -- Commissioner
13 Forbis has requested that Laclede do some more research on
14 this Section 393.130.

15 COMMISSIONER FORBIS: They offered.

16 JUDGE RUTH: I'm sorry. They offered to do
17 this research.

18 Laclede, can you give me an estimate when you
19 think you might have that ready?

20 MR. SWEARENGEN: Today's Thursday. Probably
21 Monday or Tuesday. Would that be timely enough?

22 JUDGE RUTH: The Commission will be closed on
23 Monday. If you want to try to file that Tuesday or else
24 file a notice indicating you need more time, and that would
25 let us know.

1 MR. SWEARENGEN: We'll file it on Tuesday.

2 JUDGE RUTH: If any party has a response to

3 whatever Laclede files, I'm going to ask that it be filed on

4 Wednesday, or if you need more time, then file something

5 letting me know you need more time than Wednesday.

6 MS. SHEMWELL: That's fine. Thank you.

7 MR. MICHEEL: You're the judge.

8 JUDGE RUTH: Well, yes, but when you're

9 rolling your eyes at me, I thought I'd give you an

10 opportunity to say something.

11 MR. MICHEEL: I'll let you know if I need more

12 time, your Honor. I'll follow your directions. If I need

13 more time, I'll file. If I don't, I'll file Wednesday.

14 JUDGE RUTH: Okay. Then I believe we have

15 covered everything we need to cover at this time. That will

16 conclude the oral arguments and we are off the record.

17 WHEREUPON, the oral arguments were concluded.

18

19

20

21

22

23

24

25