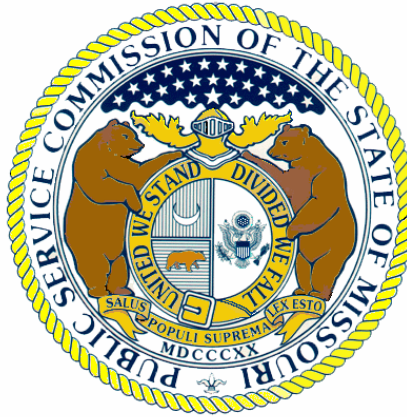


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Application of Laclede Gas
Company for an Accounting Authority Order
Authorizing the Company to Defer for Future
Recovery the Costs of Complying with the
Permanent Amendment to the Commission's
Cold Weather Rule

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Case No. GU-2007-0138

REPORT AND ORDER

Issue Date: April 17, 2008

Effective Date: April 27, 2008

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OF THE STATE OF MISSOURI

In the Matter of the Application of Laclede Gas)	
Company for an Accounting Authority Order)	
Authorizing the Company to Defer for Future)	<u>Case No. GU-2007-0138</u>
Recovery the Costs of Complying with the)	
Permanent Amendment to the Commission's)	
Cold Weather Rule)	

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Appearances

Jennifer Heintz and Lera Shemwell, Legal Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

Marc D. Poston, Senior Public Counsel, P.O. Box 2230, Jefferson City, Missouri 65102

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

REGULATORY LAW JUDGE: **Morris L. Woodruff, Deputy Chief Regulatory Law Judge**

REPORT AND ORDER

Syllabus: The Commission determines that Laclede Gas Company's cost of compliance with the permanent amendment to the cold weather rule is \$2,494,311, and directs Laclede to include that amount in the Accounting Authority Order previously established in this case.

Pending Motion

On April 10, 2008, after the Commission initially discussed this case at an agenda meeting, the Office of the Public Counsel filed a motion suggesting that the Commission waive the provision of its regulation that requires it to issue a decision in this case by no later than April 28. On April 11, the other parties to this case, Laclede and the Commission's Staff, filed pleadings opposing Public Counsel's motion. Given the opposition of the other parties, the Commission will deny Public Counsel's motion for waiver.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or

argument of any party does not indicate the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

The roots of this dispute run back to the fall of 2005. At that time, the Commission was concerned that natural gas prices were high and as a result, many customers would be unable to pay for natural gas during the upcoming winter season. To deal with that problem, the Commission promulgated an emergency rule, effective January 1, 2006, that made it easier for utility customers who owed past-due bills for service to qualify for a repayment plan that would allow them to receive service during the cold weather season. Subsequently, the Commission made portions of the emergency amendment a “permanent” part of the cold weather rule through the administrative rulemaking process.¹

The cold weather rule, 4 CSR 240.13.055, allows an affected utility to defer and recover the costs of complying with the amendment to the rule through an accounting authority order (AAO) effective until September 30, of each year for the preceding winter.² On September 29, 2006, as it is allowed to do by the terms of the cold weather rule, Laclede Gas Company applied for an AAO to recover its costs of compliance with the permanent amendment to the cold weather rule for the 2006-2007 cold weather season. The Commission granted the requested AAO on December 7, 2006.

Thereafter, on October 31, 2007, Laclede filed a request for determination of its cost of compliance with the permanent amendment to the cold weather rule. Again, this request

¹ 31 Mo Reg. 18, Page 1436 (September 15, 2006). The parties refer to this amendment as the permanent amendment to distinguish it from the earlier emergency amendment. This report and order will also refer to it as the permanent amendment for that reason.

² 4 CSR 240-13.055(14)(G)1.

is consistent with the procedural requirements of the rule.³ At that time, Laclede asserted that its cost of compliance, measured as of September 30, 2007, was \$2,667,870.

Laclede's request for determination of its cost of compliance explains that the Commission determined its cost of compliance with the emergency amendment for the period of January through March, 2006, as part of Laclede's rate case proceeding.⁴ Laclede asked the Commission to similarly defer making a determination on its current request until that request could be evaluated as part of its next rate case. The Commission's Staff and the Office of the Public Counsel objected to that suggestion, so the Commission directed Staff and Public Counsel to submit their positions regarding Laclede's request for determination of costs by February 28, 2008, with all supporting evidence, as provided in the regulation.⁵

On February 28, Laclede and Staff filed a nonunanimous stipulation and agreement by which they agreed Laclede should be allowed to defer and recover compliance costs of \$2,494,311, plus additional interest, in its next rate case. They also agreed that Laclede should amortize that amount in rates over up to a five-year period beginning with the effective date of the new rates established in Laclede's next rate case.

On the same date, Public Counsel filed its own statement of position regarding Laclede's request for determination of costs, urging the Commission to substantially reduce the amount of costs claimed by Laclede. On March 5, Public Counsel formally objected to the nonunanimous stipulation and agreement filed by Laclede and Staff.

Because of the lack of agreement between the parties, the Commission conducted an

³ 4 CSR 240-13.055(14)(G)2.

⁴ Commission Case No. GR-2007-0208.

evidentiary hearing on March 31. The parties filed post-hearing briefs on April 7.

The Effect of the Permanent Amendment to the Cold Weather Rule

The purpose of the cold weather rule is to protect the health, safety, and comfort of natural gas customers by preventing the utility from shutting off gas service for nonpayment between November 1 and March 31, on a day when the outside temperature is predicted to drop below 32 degrees. Because of notice and scheduling requirements written into the rule, a utility usually cannot disconnect a customer for nonpayment during the winter months.⁶ That means a customer receiving gas service at the start of the cold weather season will likely be able to retain that service until spring. For that reason, customers who owe a past-due balance from the previous winter, whose service may even have been shut off during the summer for non-payment, will make a strong effort to be reconnected before cold weather sets in. Governmental and social service agencies are also active at that time in giving grants to at-risk customers to try to get them reconnected to service before the winter. Understandably, that time is when a utility, such as Laclede, has the most leverage to obtain past-due payment from its customers.⁷

The cold weather rule as it existed before the permanent amendment, allowed a customer to be reconnected for the winter if he or she paid 80 percent of his or her past-due balance and entered into a payment plan to pay-off the remaining balance. The permanent amendment reduced the initial payment requirement to 50 percent of the past-due balance, or five hundred dollars, whichever was less. More customers were able to qualify for reconnection under this standard, in part because the fixed amount of money available to

⁵ 4 CSR 240-13.055(14)(G)2.

⁶ Transcript, Page 54, Lines 10-19.

governmental and social service agencies for grants to low-income customers could be spread to more customers to allow more customers to be reconnected.

Since customers who reconnect for a partial payment under the cold weather rule have failed to pay their gas bills in the past, they are more likely to be unable to pay their future bills as well. Consequently, having more customers reconnected under the cold weather rule results in more uncollected payments for the utility. In recognition of that fact, the permanent amendment established a method by which the gas utilities would be allowed to defer and recover their incremental costs of complying with the permanent amendment in a future rate case.

The Determination of Laclede's Cost of Compliance

Laclede and Staff included the following amounts in their determination of Laclede's cost of compliance:

- 1) \$930,221 in additional unpaid arrearages incurred by customers after taking advantage of the new rule provisions;
- 2) \$1,529,432 as the difference between the smaller upfront arrearage payment required under the amendment (\$500 or 50%) and the payment that could have been collected under the previous rule (80%);
- 3) \$34,658 in interest accumulated from June 30, 2007 to September 30, 2007.
- 4) \$0.00 for increased administrative costs.⁸

Laclede's numbers were calculated by examining the customer account of each of the 8,440

⁷ Transcript, Pages 66-67, Lines 24-25, 1-12.

⁸ Fallert Direct, Ex. 1, Schedule 1, Paragraph 17. Laclede's initial request sought \$64,640 for additional administrative costs, but Laclede dropped its claim for those costs as part of the agreement with Staff.

customers who were reconnected under the provisions of the cold weather rule during the winter of 2006-2007.

All the customers who reconnected under the cold weather rule had an unpaid beginning balance, ranging from a few hundred dollars to a few thousand dollars. Under the old rule, Laclede would reconnect a customer who had previously defaulted under a cold weather payment plan only if the customer paid 80 percent of that beginning balance. The permanent amendment to the cold weather rule reduced that payment requirement to 50 percent or \$500, which ever was less.⁹ So, a customer who owed an unpaid balance of \$1,000 would have had to pay \$800 to reconnect under the old cold weather rule. Under the amendment, that customer would have to pay only \$500 to be reconnected. Laclede and Staff would allow Laclede to include the \$300 difference between \$800 and \$500 as a cost of compliance with the amendment, assuming the customer did not subsequently pay that difference.¹⁰

After customers were reconnected under the cold weather rule, many incurred additional unpaid balances. For example, the previously described hypothetical customer who had an initial unpaid balance of \$1,000, paid \$500 to be reconnected, leaving a \$500 balance at the time he or she was reconnected under the cold weather rule. Over the next winter, including any payments made during the following summer, the customer might have accumulated an unpaid balance of \$1,100, measured as of September 30, 2007. The \$600 increase in the unpaid balance would be included as a cost of compliance in Laclede and Staff's calculation.

Laclede examined each of the 8,440 affected customer accounts and totaled the

⁹ 4 CSR 240-13.055(14)(A).

previously described costs of compliance for those accounts. Laclede then reduced the total cost by approximately 60 percent in recognition of the fact that some bad debt expense, including costs associated with the cold weather rule, are already built into Laclede's rates through its last rate case.¹¹ By making that adjustment, Laclede intended to ensure that it was seeking deferral of only incremental costs in its AAO. The exact amount of that adjustment is, however, an estimate, not a customer specific calculation.¹²

Public Counsel is willing to include the \$930,221 in additional unpaid arrearages and the accumulated interest when determining Laclede's cost of compliance for inclusion in the AAO.¹³ However, it objects to including \$1,529,432 as the difference between the upfront payments that could be collected under the new and old rule.

Public Counsel contends those costs should not be included in the calculation of Laclede's cost of compliance because they would not be an incremental cost of compliance with the rule. In other words, Laclede had already incurred those bad debts before the customer was reconnected under the loosened requirements of the emergency amendment. As a result, Laclede's inability to collect those debts should not be included as a cost of complying with the emergency amendment.

Furthermore, Public Counsel contends that allowing Laclede to include those costs for recovery through its AAO could allow Laclede to recover those costs twice, if the customer subsequently pays-off all or a portion of that debt.

Prior Calculation of the Cost of Compliance with the Emergency Amendment

¹⁰ Transcript, Page 51, Lines 19-25.

¹¹ Transcript, Page 53, Lines 3-7 and Page 49, Lines 14-18.

¹² Transcript, Page 71, Lines 8-14.

¹³ Transcript, Page 137, Lines 6-21.

This is the first time the Commission has been asked to determine Laclede's cost of compliance with the permanent amendment to the cold weather rule. It is not, however, the first time the Commission has had to determine Laclede's cost of compliance. The permanent amendment did not go into effect until the fall of 2006, but a similar emergency amendment to the cold weather rule was in effect for January through March of 2006. The Commission granted Laclede an AAO to allow it to defer and recover the cost of complying with the emergency rule. The Commission made its determination of the cost of compliance with the emergency rule in conjunction with the overall settlement of Laclede's subsequent rate case.

The parties to the stipulation and agreement that resolved the rate case agreed to a specified dollar amount in uncollectible expense and interest costs relating to compliance with the emergency cold weather amendment, and further agreed that those costs would be amortized and recovered in rates over a five-year period.¹⁴ The rate case settlement did not describe the method by which the agreed upon dollar amount was derived, and the stipulation and agreement specifically states that none of its signatories shall be deemed to have approved or acquiesced in any ratemaking principal, including any method of cost determination.¹⁵ However, the agreed upon dollar amount is the amount recommended in the prefiled testimony of Public Counsel's witness in that case, Ted Robertson.¹⁶ That fact is significant because Laclede and Staff calculated their determination of costs in this case

¹⁴ Fallert Direct, Ex. 1, Schedule 7, Unanimous Stipulation and Agreement, Paragraph 16, *In the Matter of Laclede Gas Company's Tariff to Revise Natural Gas Rate Schedules*, Case No. GR-2007-0208.

¹⁵ Unanimous Stipulation and Agreement, Paragraph 25, *In the Matter of Laclede Gas Company's Tariff to Revise Natural Gas Rate Schedules*, Case No. GR-2007-0208.

¹⁶ Fallert Direct, Ex. 1, Schedule 6. See also, Transcript, Page 105, Lines 20-21.

using the method used by Robertson in the rate case.¹⁷ Laclede and Staff contend that if the method used by Public Counsel to determine Laclede's costs was acceptable in the rate case, it should also be acceptable in this case.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law:

1. Laclede Gas Company is a "Gas Corporation" and "Public Utility," as those terms are defined at Subsections 386.020 (18) and (42), RSMo Supp. 2007. As such, it is subject to regulation by this Commission.

2. Commission Rule 4 CSR 240-13.055(5)(A) and (B) provide that a gas utility may not disconnect gas service to a customer who relies on gas for heat on any day when the National Weather Service forecast for the following day predicts that the temperature will drop below 32 degrees, or on any day when utility personnel will not be available to reconnect service on the immediately succeeding days and the forecast for those days are for temperatures dropping below 32 degrees.

3. Commission Rule 4 CSR 240-13.055(3) requires a utility seeking to discontinue service for nonpayment between November 1 through March 31 to take multiple specified steps to notify a customer of the impending disconnection beginning at least ten days before the date of the proposed disconnection.

4. Commission Rule 4 CSR 240-13.055(6) provides that a utility may not discontinue heat-related utility service for nonpayment from November 1 through March 31, if, among other things, the customer makes an initial payment and enters into a payment

¹⁷ Fallert Direct, Ex. 1, Schedule 1, Paragraph 17.

agreement in compliance with section (10) of the cold weather rule. Similarly, Section (9) of the same rule requires the utility to reconnect previously disconnected heat-related utility service for the same reasons.

5. Commission Rule 4 CSR 240-13.055(10) establishes the criteria for acceptable payment agreements under the cold weather rule. Paragraph (10)(C)2 of that rule states that a customer who has defaulted on a payment plan under the cold weather rule must make an initial payment under their payment plan of 80 percent of the customers preexisting balance, unless the customer and the utility agree to a different amount.

6. Commission Rule 4 CSR 240-13.055(14), known as the permanent amendment to the cold weather rule, establishes a special provision, applicable only to providers of natural gas service between November 1 and March 31. Paragraph (A) of that rule provides in part as follows:

From November 1 through March 31, notwithstanding paragraph (10)(C)2 of this rule to the contrary, a gas utility shall restore service upon initial payment of the lesser of fifty percent (50%) or five hundred dollars (\$500) of the preexisting arrears, with the deferred balance to be paid as provided in subsection (10)(B). ... Between November 1 and March 31, any customer threatened with disconnection may retain service by entering into a payment plan as described in this section. ...

7. Commission Rule 4 CSR 240-13.055(14)(F) allows a gas utility to recover its costs of complying with the permanent amendment. That subsection states as follows:

A gas utility shall be permitted to recover the costs of complying with this section as follows:

1. The cost of compliance with this section shall include any reasonable costs incurred to comply with the requirements of this section;
2. No gas utility shall be permitted to recover costs under this section that would have been incurred in the absence of this section, provided that the costs calculated in accordance with paragraph 14(F)1. shall be considered costs of complying with this section;

3. Any net cost resulting from this section as of June 30 each year shall accumulate interest at the utility's annual short-term borrowing rate until such time as it is recovered in rates; and

4. No bad debts accrued prior to the effective date of this section may be included in the costs to be recovered under this section, provided that a gas utility may continue to calculate and defer for recovery through a separate Accounting Authority Order the costs of complying with the commission's January 1, 2006 emergency amendment to this rule upon the same terms as set forth herein. The costs eligible for recovery shall be the unpaid charges for new service received by the customer subsequent to the time the customer is retained or reconnected by virtue of this section plus the unpaid portion of the difference between the initial payment paid under this section and the initial payment that could have been required from the customer under the previously enacted payment provisions of section (10) of this rule, as measured at the time of subsequent disconnection for nonpayment or expiration of the customer's payment plan.

8. Commission Rule 4 CSR 240-13.055(G) establishes the procedure by which a gas utility is to be allowed to defer and recover the costs specified in the previous section.

That section states as follows:

A gas utility shall be permitted to defer and recover the costs of complying with this rule through a one (1)-term Accounting Authority Order until such time as the compliance costs are included in rates as part of the next general rate proceeding or for a period of two (2) years following the effective date of this amendment;

1. The commission shall grant an Accounting Authority Order, as defined below, upon application of a gas utility, and the gas utility may book to Account 186 for review, audit and recovery all incremental expenses incurred and incremental revenues that are caused by this section. Any such Accounting Authority Order shall be effective until September 30, of each year for the preceding winter;

2. Between September 30 and October 31 each year, if a utility intends to seek recovery of any of the cost of compliance with this section, the utility shall file a request for determination of the cost of compliance with this section for the preceding winter season. The request by the utility shall include all supporting information. All parties to this filing will have no longer than one hundred twenty (120) days from the date of such a filing to submit to the commission their position regarding the company's request with all supporting evidence. The commission shall hold a proceeding where the utility shall present all of its evidence concerning the cost of compliance and other parties, including commission staff, shall present any evidence that the costs asserted by the utility should be disallowed in whole or part. Such a proceeding may be waived by the unanimous request of the parties or by a

nonunanimous request without objection. The commission shall establish the amount of costs it determines have been reasonably incurred in complying with this section within one hundred eighty (180) days of the utility's request and such amount will be carried forward into the utility's next rate case without reduction or alteration. Such costs shall be amortized in rates over a period of no greater than five (5) years and shall be recovered in a manner that does not impair the utility's ability to recover other costs of providing utility service. If the commission fails to establish the amount of costs within one hundred eighty (180) days, then the amount requested by the utility shall be deemed reasonably incurred;

3. The commission has adopted the Uniform System of Accounts in 4 CSR 240-4.040. Accounting Authority Orders are commission orders that allow a utility to defer certain expenses to Account 186 under the Uniform System of Accounts for later recovery as determined by the commission in a subsequent general rate case; and

4. Although the Accounting Authority Order allows the gas utility to recover the reasonably incurred expenses only within the context of a general rate case, all such reasonably incurred expenses shall be recovered by the gas utility, together with interest thereon, as set forth above.

9. An AAO, such as the one granted to Laclede earlier in this case, allows a utility to defer certain costs for later consideration in a general rate case. The deferral of costs in an AAO does not guarantee the utility a right to ultimately recover the amounts deferred in that future rate case.¹⁸ Rather, the Commission must consider all other relevant factors when determining in the rate case the appropriate rate the utility may charge.¹⁹

10. Missouri's courts have held that "where language of a statute is clear, courts must give effect to the language as written."²⁰ The courts have also stated that "where there is a conflict between statutes enacted at the same time that address the same subject

¹⁸ *Missouri Gas Energy v. Pub. Serv. Comm'n*, 978 S.W.2d 434 (Mo. App. W.D. 1998).

¹⁹ *Public Counsel v. Pub. Serv. Comm'n*, 858 S.W.2d 806 (Mo. App. W.D. 1993).

²⁰ *Kearney Special Road Dist. v. County of Clay*, 863 S.W. 2d 841, 842 (Mo. banc 1993).

matter, the conflict should be resolved by giving effect to the more specific provision.”²¹ “In interpreting statutes and rules, the same principles of construction are used.”²²

11. “Rules of a state administrative agency duly promulgated pursuant to properly delegated authority have the force and effect of law and are binding upon the agency adopting them.”²³

DECISION

Public Counsel challenges several aspects of Laclede’s request for determination of its cost of compliance with the permanent amendment to the cold weather rule. The only challenge that Public Counsel actually quantifies is its contention that Laclede should not be allowed to defer the \$1,529,432 it claims as the cost to it of the permanent amendment’s requirement of a smaller upfront arrearage payment before a previously defaulting customer must be allowed to receive gas service.

Public Counsel contends the inclusion of these amounts would allow Laclede to defer, and ultimately recover, expenses relating to prior bad debts that were incurred before the permanent amendment to the rule went into effect and could not have been caused by the permanent amendment. Accordingly, Public Counsel argues these costs could not be incremental costs and cannot be included in the AAO.

In support of this argument, Public Counsel points to Commission Rule 4 CSR 240-13.055(14)(F)4, which states in part: “[n]o bad debts accrued prior to the effective date of this section may be included in the costs to be recovered under this section”. Public Counsel also points to section (14)(F)2 of that rule, which states: “[n]o gas utility shall be

²¹ *Kidde America, Inc. v. Dir. of Revenue*, 242 S.W.3d 709 (Mo. banc 2008).

²² *Morton v. Missouri Air Conservation Comm’n*, 944 S.W.2d 231, 238 (Mo. App. S.D. 1997).

permitted to recover costs under this section that would have been incurred in the absence of this section,” Furthermore, Public Counsel cites section (14)(G)1, which allows a gas utility to “book to Account 186 for review, audit and recovery all incremental expenses incurred and incremental revenues that are caused by this section.”

However, Public Counsel’s argument to exclude these costs from Laclede’s AAO runs headlong into section (14)(F)4, which explicitly states:

The costs eligible for recovery shall be the unpaid charges for new service received by the customer subsequent to the time the customer is retained or reconnected by virtue of this section **plus the unpaid portion of the difference between the initial payment paid under this section and the initial payment that could have been required from the customer under the previously enacted payment provisions of section (10) of this rule**, as measured at the time of subsequent disconnection for nonpayment or expiration of the customer’s payment plan. (emphasis added).

That provision unambiguously allows Laclede to include the difference in initial payment required by the permanent amendment as part of its cost of compliance.

Public Counsel attempts to avoid this unambiguous result by arguing that the sections of the regulation it cites for the proposition that Laclede may defer only incremental expenses are in conflict with the section explicitly allowing deferral of the costs resulting from the differences in initial payment. Public Counsel claims this “conflict” results in an ambiguity in the regulation that the Commission should resolve by ignoring the provision that specifically allows deferral of those costs.

As indicated in the Commission’s conclusions of law, a general rule of statutory or regulatory construction holds that if two statutes or regulatory provisions are in conflict, the more specific provision is to be given effect. The provisions cited by Public Counsel merely

²³ *Missouri Nat’l Educ. Ass’n v. Missouri State Bd. of Mediation*, 695 S.W.2d 894, 897 (Mo. banc 1985).

state generally that only incremental costs are to be deferred or recovered. The provision that specifies the costs eligible for recovery under the rule, explicitly states that costs resulting from differences in initial payment are eligible for recovery. If there is a conflict between the sections of the regulation cited by Public Counsel, the more specific provision must prevail.

However, there is no reason to conclude that the provisions of the regulation are even in conflict with each other. In fact, the costs resulting from the differences in initial payment requirements are incremental costs that are to be recovered under all provisions of the rule. This is true because reducing the initial payment from 80 percent to 50 percent of the past-due balance, or \$500, reduced Laclede's leverage to compel those customers to pay their past-due balances. In other words, the amendment deprived Laclede of its best opportunity to collect a larger portion of its past-due balances. The customers who took advantage of the reduced initial payment provision of the amendment are customers who had previously defaulted on a cold-weather-rule-repayment agreement from a previous year. They were unlikely to fully pay their unpaid balances, so the reduction in Laclede's ability to compel a larger initial payment had an adverse impact on Laclede's costs. The rule reasonably allows Laclede an opportunity to recover those incremental costs resulting from the amendment.

Public Counsel's witness, Russell Trippensee, testified about a difference between accrual and cash based accounting to establish what he contends is a conflict and resulting ambiguity between the different sections of the rule. According to Trippensee, Laclede generally operates under an accrual accounting system. However, the cost recovery system of section (14)(F)(4) is based on a cash accounting system, which Trippensee

explains is incompatible with the accrual accounting system, creating a need to reconcile the two systems in Laclede's next rate case.

Whatever the merits of Public Counsel's accounting arguments, the need for any reconciliation is an issue properly addressed in Laclede's next rate case. Trippensee does not claim that any such reconciliation would be impossible, merely that the effort required would probably be "significant".²⁴ As previously indicated, any conflict between the provisions of the regulation would not justify a decision to ignore the more specific provision of the regulation.

Public Counsel raises an additional argument that is closely related to its accounting reconciliation argument. Public Counsel is concerned that establishing an amount that Laclede may recover in its next rate case based on customer balances at a particular time, in this case, September 30, 2007, would allow Laclede to possibly double recover those costs if a customer subsequently further paid down their past-due balance after the snapshot date.

Looking at this question strictly as an accounting matter, Public Counsel's argument may be correct. However, as a practical matter, the September 30 measurement date is conservative, in that it measures a customer's balance at a time of the year when it is likely to be near its lowest point. Customers who have difficulty paying their gas bills are more likely to be able to pay down their balance during the summer, when gas bills are low. Once the cold of winter arrives and gas bills start to go up, those customers are generally less likely to be able to pay off past due balances.

²⁴ Trippensee Direct, Ex. 4, Page 8, Lines 22-23.

Public Counsel's argument also fails when examined as a legal matter. Public Counsel's concern could be valid only if it is assumed that Laclede's cost amount will be passed through into rates without further consideration in a future rate case. That is not the purpose or effect of an AAO and that is not what will happen in Laclede's next rate case. Instead, the Commission will consider the deferred amount, along with all other relevant factors, when examining Laclede's bad debt expenses, and ultimately establish a just and reasonable rate that Laclede will be allowed to charge its customers.

The Commission does, however, find that Public Counsel has legitimate concerns about possible double recovery. For that reason, the Commission will direct Laclede to continue to track payments and additional arrearages of the 8,440 affected customers after the cut-off date of September 30, 2007. Laclede shall present its findings to the Commission for consideration at Laclede's next rate case.

At the hearing, Public Counsel's witness said Public Counsel would disallow only the approximately \$1.5 million Laclede was claiming as the cost resulting from differences in initial payment requirements. The witness indicated Public Counsel's agreement that the remaining \$964,000 was appropriate for inclusion in an AAO.²⁵ However, Public Counsel's brief raises several additional arguments challenging Laclede's entire claim, including an allegation that Laclede has failed to establish its claim by clear and convincing evidence.

Specifically, Public Counsel alleges that perhaps Laclede reconnected some customers with less than the 50 percent minimum required by even the permanent amendment and should not be allowed to claim the costs resulting from those customers as a cost of compliance. Furthermore, perhaps Laclede was not aggressive enough in

²⁵ Transcript, Page 137, Lines 6-21.

disconnecting customers during the winter and should not be allowed to claim the costs from those customers as a cost of compliance. Public Counsel does not recommend any specific disallowance for these allegedly overstated costs, instead merely suggesting that the Commission should entirely disallow Laclede's request for determination of costs.

The Commission will not give significant weight to these additional arguments. Commission Rule 4 CSR 240-13.055(G)2 allowed Public Counsel 120 days after Laclede filed its request for determination to submit its position regarding the company's request, with all supporting evidence. These additional challenges are merely suppositions about possible flaws in Laclede's calculations, unsupported by any evidence.

Furthermore, the Commission's rule does not allow the Commission to simply dismiss Laclede's request for determination. Instead, 4 CSR 240-13.055(G)2 requires the Commission to determine the company's reasonably incurred costs within 180 days of the company's filing of a request for determination. If the Commission fails to do so within the time allowed, the amount requested by Laclede is deemed reasonably incurred. Simply finding that Laclede should have considered other possibilities and refusing to make a determination is not an option available to the Commission.

In any event, the Commission finds that the method used by Laclede and Staff to determine Laclede's cost of compliance is reasonable. This is the same method that the Commission accepted last year as the basis for determining Laclede's cost of compliance with the Commission's emergency amendment to the cold weather rule. In fact, it is the same method proposed in Laclede's last rate case by Public Counsel's witness.

Public Counsel correctly points out that the stipulation and agreement that resolved that rate case provides that by agreeing to the stipulated settlement, Public Counsel did not

agree to any particular method of cost determination. For that reason, Public Counsel is not precluded from arguing that the method it previously espoused is incorrect and supporting a different method in this or future cases. However, the Commission concludes that the calculation methods it accepted in the recent rate case are still valid for determining Laclede's cost of compliance in this case.

The Commission finds that the \$2,494,311 cost of compliance recommended by Laclede and Staff is correct and may be included in Laclede's previously approved AAO.

IT IS ORDERED THAT:

1. The Commission determines that Laclede Gas Company shall include \$2,494,311 in the Accounting Authority Order previously approved in this case as its cost of compliance with Commission Rule 4 CSR 240-13.055(14).
2. The determined cost of \$2,494,311 shall continue to accumulated interest as provided in Commission Rule 4 CSR 240-13.055(14)(F).
3. Laclede Gas Company shall track additional payments and arrearages to customer accounts connected or reconnected as a result of compliance with Commission Rule 4 CSR 240-13.055(14) during the time covered by the Accounting Authority Order previously approved in this case, and shall report its findings to the Commission as part of its next general rate case.
4. Public Counsel's Motion for a Waiver of Commission Rules, filed on April 10, 2008, is denied.

5. This Report and Order shall become effective on April 27, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray and Jarrett, CC., concur;
Clayton, C., dissents, dissent to follow;
and certify compliance with the provisions
of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 17th day of April, 2008.