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	)))))	**Case No. GU-2007-0138**

DISSENTING OPINION OF COMMISSIONER ROBERT M. CLAYTON III

This Commissioner dissents from the award of an Accounting Authority Order (AAO) to Laclede Gas for alleged costs associated with the Cold Weather Rule (CWR).[1] This Commissioner believes that the CWR was never intended to be used as a method of recovering past bad debt of non-paying customers. Granting this AAO may allow recovery of this type of bad debt in the future in the form of a regulatory asset. While there is a debate that the CWR actually may increase a utility's net income and collections, the rule permits the utility to track any costs that may be incurred as a consequence of complying with the rule. Unfortunately, the majority decision inappropriately permits recovery beyond CWR costs by allowing the utility to collect an expense on more than one occasion.

The arrearage charges in dispute are costs that would have been incurred regardless of whether there is a CWR in place. When a utility supplies gas to a customer, it charges that customer for the usage. When a customer fails to pay their bill, the utility then turns off the gas and determines the owed amount to be bad debt. In many cases,

[1] 4 CSR 240-13.055.

that debt may be considered uncollectible at a certain time, perhaps after six months, and the debt is written off. Obviously, uncollectible debt harms the company by increasing its expenses and thus reducing its net income. The Commission has traditionally recognized the burden that such uncollectible debt can place on a utility and this issue usually is presented in a rate case. Normally, the utility receives an annualized allowance built into its revenue requirement under the description of "bad debt expense." Thus, gas utilities already receive compensation for a forecasted amount of bad debt.

The majority incorrectly interprets the CWR to include cost recovery for a percentage of arrearages incurred before a ratepayer reconnects under the CWR. The majority relies on section 4 CSR 240-13.055(14)(F)(4) which reads,

> 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 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 a subsequent disconnection for nonpayment or expiration of the customer's payment plan.

As the Office of Public Counsel (OPC) argues, this provision is in direct conflict with a number of provisions within the same rule which reject the notion of allowing future recovery of costs previously incurred for non-paying customers. OPC cites a number of sections to support its proposition including the following:

> No gas utility shall be permitted to recover costs under this section that would have been incurred in the absence of this section. 4 CSR 240-13.055(14)(F)(2).

> No bad debts accrued prior to the effective date of this section may be included in the costs to be recovered under this section. 4 CSR 240-13.055(14)(F)(4).

> The Commission shall establish the amount of costs it determines have been reasonably incurred in complying with this section. 4 CSR 240-13.055(14)(G)(2).
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> [T]he utility may book to Account 186 for review, audit and recovery all incremental expenses incurred and incremental revenues that are caused by this section. 4 CSR 240-13.055(14)(G)(1).

This compilation of CWR sections suggests concern with authorizing the future recovery of costs that were not incurred as a result of the CWR. The language in CSR 240-13.055(14)(F)(2) suggests it is appropriate for recovery of this new cost that would not exist without the CWR, but it would not allow recovery of any of the arrearages which are already folded into rates. One can argue that section CSR 240-13.055(14)(F)(4) allows recovery for the new costs as well as the arrearages. Therefore, it appears that these sections are in direct conflict.

OPC correctly asserts that the CWR was never meant to convert old debt to new debt and allow additional recovery in the future. As described above, the utility already has a component in rates for bad debt expense. OPC alleges in this case that, in addition to the bad debt expense component in rates, the gas utility will be able to collect the same amounts in the form of a CWR AAO. Some would call this "double dipping."

When the Commission promulgated the CWR, there was ample discussion of whether the CWR actually harms utilities or not. Utilities argue that by allowing favorable terms during winter months to customers who do not pay causes an increase in bad debt expense, harming the bottom line. However, some have argued that the CWR actually increases the company's collections because it affords customers a chance to get back on the rolls of the company with a payment plan including provisions for prior bad debt. The company benefits by collecting previously uncollectible debt and by continuing to sell gas to the customer during its most profitable months.

Rules of interpretation assist in determining which provision of the regulation should be followed. One such rule is that the more specific section controls the general section. Using this guideline to interpret the regulation is not helpful because both sections contain similar levels of detail. While section CSR 240-13.055(14)(F)(4) provides a lengthy description of an equation to be used to calculate the recoverable costs, which includes new and old costs, section CSR 240-13.055(14)(F)(2) and additional provisions of CSR 240-13.055(14)(F)(4) contain language prohibiting collections of old debt unrelated to the CWR.

Additionally, one can assess the conflicting language in terms of the policy behind the regulation and effectuate the regulation's purpose. As authorized in CSR 240-13.055(14)(F), "A gas utility shall be permitted to recover the costs of complying with this section as follows…" As explained above, prior arrearages are not a cost of complying with the section. Therefore, this Commission should decline to authorize the chance for future recovery of prior bad debt and focus strictly on debts associated, directly, with the CWR.

Further, as mentioned above, there is an added policy reason why CSR 240-13.055(14)(F)(2) suggests that only future bad debt be included in the AAO. Past debt is calculated into rates through a bad debt expense, a component already included in the company's revenue requirement. If a company may collect that expense through rates and then recover that cost a second time through the CWR, the utility has collected those funds twice. This violates general fairness and harms all ratepayers.

This Commissioner concurred in the CWR rulemaking because it was time that a new CWR be implemented. While this Commissioner urged the Commission to go further in addressing the significant public health and welfare implications of citizens losing their heating service during the winter months than the final rule did, it was important to move forward with provisions that improved the CWR. This Commissioner and former Commissioner Gaw offered amendments to clarify that no prior debts be collected from the CWR AAO process. It was also important that any increased collections offset any increased debt so that the company does not receive more than what is fair. Additional collections from prior arrearages that are actually received by the company should be used to offset the future CWR bad debt incurred, if any. Those are collections that the company would not have received without the CWR.

Because of the complexity of the discussion, several examples to illustrate this Commissioner's concerns would be helpful. The first scenario involves the circumstance of a poorly performing customer who fails to make any payments during the CWR period, despite paying the 50% balance to be reinstated.

Scenario 1

	Oct.	Nov.	Dec.	Jan.	Feb.	March	Accumulated Usage Total
Debt/Usage	\$1000[2]	\$150	\$150	\$150	\$150	\$150	\$1,750
Customer Payments	\$500[3]	\$0	\$0	\$0	\$0	\$0	\$500
	Short Payments	(\$150)	(\$150)	(\$150)	(\$150)	(\$150)	\$1,250

Laclede Position—AAO for \$1,050 [\$300[4] + \$750[5] = \$1,050]

[2] This amount represents arrearage incurred prior to CWR.
[3] This amount represents the 50% payment for reconnection under the CWR.
[4] This amount represents the difference in initial payments to reconnect under the CWR. The CWR requires payment of 50% of arrearage while the prior CWR mandated 80% payment. This figure represents the difference between the 80% figure of \$800 and the 50% figure of \$500.

Alternative Position—AAO for $250 [$1000[6] - $1,250[7] = -$250]

Utility Benefit - $0[8]

In this instance, the utility is harmed by $250 and should receive an AAO for $250, although Laclede would suggest that an AAO of $1,050 would be appropriate.

In another scenario, the customer will make the 50% payment and make a consistent but inadequate attempt to keep up with normal winter usage.

Scenario 2[9]

	Oct.	Nov.	Dec.	Jan.	Feb.	March	Accumulated Usage Total
Debt/Usage	$1000	$150	$150	$150	$150	$150	$1,750
Customer Payments	$500	$50	$50	$50	$50	$50	$ 750
	Short Payments	($100)	($100)	($100)	($100)	($100)	$1,000

Laclede Position—AAO for $800 [$300 + $500 = $800]

Alternative Position—AAO for $0 [$1000 - $1000 = $0]

Utility Benefit - $0

In this instance, the utility is no worse off than it would have been without the CWR. The customer was able to receive gas service, the debt owed to the company is no more

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[5] This figure represents the total amount short payments by the customer for service during the CWR period.

[6] This amount is the debt existing prior to the customer enrolling in the CWR Program on October 31. If the customer did not enroll in the CWR Program, this debt would still be owed and on the books of the utility.

[7] This figure represents the total amount short payments by the customer for service during the CWR period.

[8] This figure represents payments or gains in revenue the company received because of the CWR. Rather than suffering a loss because of the CWR, the utility actually gained a benefit from the customers' participation in the CWR.

[9] Footnotes have been omitted from scenarios 2 through 4. The same footnotes apply and should be considered when reviewing each of the examples set out.

than it was and the prior debt is to be included in past rate case allocations for bad debt expense.

Scenario 3

	Oct.	Nov.	Dec.	Jan.	Feb.	March	Accumulated Usage Total
Debt/Usage	$1000	$150	$150	$150	$150	$150	$1,750
Customer Payments	$500	$150	$100	$125	$50	$150	$1,075
	Short Payments	($0)	($50)	($25)	($100)	($0)	$675

Laclede Position—AAO for $475 [$300 + $175 = $475]

Alternative Position—AAO for $0 [$1000 - $675 = $325]

Utility Benefit - $325

In this case, the utility has a lower debt at the end of the CWR than it did prior to enrolling the customer in the program. While the utility's standing is improved by $325 from when the CWR period began, it also gets an AAO for potential collection of an additional $475 in the next rate case, on top of the normal bad debt expense.

Scenario 4

	Oct.	Nov.	Dec.	Jan.	Feb.	March	Accumulated Usage Total
Debt/Usage	$1000	$150	$150	$150	$150	$150	$1,750
Customer Payments	$500	$150	$150	$150	$150	$150	$1,250
	Short Payments	($0)	($0)	($0)	($0)	($0)	$500

Laclede Position—AAO for $300 [$300 + $0 = $300]

Alternative Position—AAO for $0 [$1000 - $500 = $500]

Utility Benefit - $500

In this case, the utility received the initial payment of $500 to offset the prior debt and then received full payment for current usage during the CWR period. The utility's standing is improved by $500 compared to if the CWR rule didn't exist or wasn't available. According the majority accounting, despite improving the utility's position by $500, it is also authorized to collect another $300 through the AAO in the next rate case. This example clearly illustrates that the CWR mechanism employed by the majority converts the old debt to new. Despite the benefits that the utility received from the CWR, it can now receive accounting treatment for the old, unrelated debt.

This Commissioner believes that the utility in the present case will now have the opportunity to collect more than what is permitted under the CWR. By authorizing the collection of prior arrearages and by not offsetting those arrearage payments to potentially new debt, the majority may be authorizing the utility to collect more than it should under the law. That is not what the CWR is all about.

For the reasons stated above, this Commissioner respectfully dissents.

Respectfully submitted,

Robert M. Clayton III
Commissioner

Dated on this 31st day of July 2008,
Jefferson City.