

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

October 8, 2009
Jefferson City, Missouri
Volume 2

In the Matter of Laclede Gas)
Company's Tariff Revision)
Designed to Clarify its Liability)Case No. GT-2009-0056
for Damages Occurring on Customer)
Piping and Equipment,)

JUDGE NANCY DIPPELL, Presiding
DEPUTY CHIEF REGULATORY LAW JUDGE

JEFF DAVIS,
TERRY JARRETT,
ROBERT S. KENNEY,
COMMISSIONERS

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

2 JUDGE DIPPELL: Okay. Let's go ahead and go on
3 the record. Good morning. This is Case No. GT-2009-0056
4 in the matter of Laclede Gas Company's tariff revision
5 designed to clarify its liability for damages occurring on
6 customer piping and equipment.

7 My name is Nancy Dippell. I'm the Regulatory
8 Law Judge assigned to this case. And we're here today for
9 an evidentiary hearing. We're going to begin with entries
10 of appearance. Can we begin with Staff?

11 MR. BERLIN: Yes, Judge. Appearing on behalf of
12 the Staff of the Missouri Public Service Commission,
13 Robert S. Berlin, Lera Shemwell and Samuel Ritchie.

14 JUDGE DIPPELL: Thank you. Office of the Public
15 Counsel?

16 MR. POSTON: Thank you. Marc Poston, appearing
17 for the Office of Public Counsel and the public.

18 JUDGE DIPPELL: And Laclede Gas Company?

19 MR. ZUCKER: Rick Zucker and Michael C.
20 Pendergast, appearing on behalf of Laclede Gas Company.

21 JUDGE DIPPELL: Thank you. We're going to
22 pretty much adopt the order of witnesses and
23 cross-examination that was -- that the parties pre-filed
24 on their issues list.

25 And we will begin first, though, with opening

1 statements. And I didn't have an order of opening
2 statements. I didn't ask you all for that earlier. Will
3 we begin with Laclede or Public Counsel?

4 MR. ZUCKER: I'm glad to go first.

5 MR. POSTON: That's fine.

6 JUDGE DIPPELL: Okay. Let's begin with Laclede,
7 then.

8 OPENING STATEMENT

9 BY MR. ZUCKER:

10 MR. ZUCKER: May it please the Commission.

11 Today, when an incident occurs that involves damage to
12 persons or property in connection with a problem
13 potentially arising from the customer's natural gas
14 equipment, Laclede plays the role of a quasi insurer.

15 Time and again, the company faces patently
16 ridiculous claims, many of which survive summary judgment
17 for inexplicable reasons leaving Laclede to the whim of a
18 jury at very high stakes. The result is a burdensome
19 level of expenses for injuries, damages and insurance, all
20 of which are borne by our customers through their rates.

21 To address this situation, Laclede has submitted
22 tariffs to establish reasonable parameters for when the
23 company and its utility customers should be potentially
24 liable under these circumstances.

25 Based on a series of discussions with both the

1 Staff and Public Counsel over at least the past year, we
2 have modified the tariff proposal several times and now
3 have a proposal that the company and the Staff have been
4 able to conclude represents a reasonable balance between
5 the individual and the customer base.

6 Despite these revisions, however, Public Counsel
7 continues to oppose any reasonable limits on liability.
8 Hence, the hearing today.

9 Before addressing what's at stake in this
10 proceeding, I think it's important to clarify what's not
11 at issue. Contrary to Public Counsel's claim, this is not
12 an effort on our part to relieve ourselves from liability
13 for -- for our own negligence in providing utility
14 service. Nothing could be further from the truth.

15 Instead, what the tariff does is establish
16 reasonable parameters for determining when the company is
17 or may be negligent and, therefore, liable.

18 The tariff repeatedly states that the company
19 will not be relieved of liability if it fails to comply
20 with the detailed and comprehensive safety standards that
21 have been established by this Commission.

22 And you'll hear Public Counsel refer to these
23 standards as minimum standards. They interpret that as
24 minimal. They interpret the word "minimum" and minimal.
25 But, in fact, what minimum means is that the federal

1 government has set its standards for interstate pipeline,
2 and those standards are the minimums that the states must
3 meet. They are allowed to make them more stringent.

4 Now, in fact, the State of Missouri has made
5 these standards more stringent and has among the strictest
6 safety measures of any in the country. If the company or
7 its employees fail to satisfy these safety measures,
8 Laclede remains subject not only to potential damage
9 awards in a civil case, but, also, to significant
10 penalties that the Commission is authorized to pursue
11 under the laws of this state.

12 So any assertion that we are trying to relieve
13 leave ourselves of liability for negligence is simply
14 untrue. Instead, there are three things that are at issue
15 in this case.

16 The first is whether the company and its general
17 body of ratepayers should be insurers for injuries or
18 damages suffered by a customer or even a third party in
19 those instances where the company has done everything it's
20 supposed to do under your rules for ensuring safe and
21 adequate services or where the circumstances are such that
22 there is virtually no possibility that the company did
23 anything wrong.

24 Now, rather than play the game where we pretend
25 that Laclede is at fault, Public Counsel candidly states

1 the company should play the role of general insurer, even
2 where we're not at fault because Laclede can buy insurance
3 cheaper than an individual customer and it can spread the
4 risk across all of its customers.

5 I suggest to you that such a notion is not
6 supported by any reasonable theory of law or policy. We
7 are not in the insurance business, and you are -- and you
8 are not in the business of regulating insurance companies,
9 let alone the business of determining what level or kinds
10 of insurance such companies should provide.

11 If you were, I suppose you could tell electric
12 companies that they should insure their customers for
13 every mishap that occurs with the electrical wiring in
14 their home, and you could tell water companies that they
15 should insure their customers for anything bad that
16 happens because of the product they deliver, including
17 someone drowning in their tub or when a pipe bursts and
18 causes water damage.

19 You don't do that, however, because that's not
20 the business of electric or water companies, and it's not
21 the business that you're in charge of regulating. The
22 same exact thing is true of the insurance product that
23 Public Counsel wants you to require Laclede to offer.

24 The second issue we're here for today is who
25 should determine the measures that are truly necessary to

1 provide safe and adequate service. Public Counsel takes
2 the position that while you should have a role in making
3 that determination, judges and juries should also be
4 allowed to weigh in and through damage awards and
5 litigation specify what those standards should be.

6 Once again, both the company and the Staff think
7 that's a bad idea that has little or no support in the
8 law. The -- the Missouri legislature created the
9 Commission in part to determine how utility service should
10 be provided and to ensure that it's both safe and
11 adequate.

12 That's your job, and you have appropriately
13 safeguarded it when judges, juries and others outside the
14 regulatory process have tried to usurp it. And it should
15 be your job.

16 You have the Staff, the expertise and the
17 experience to make informed and reasoned judgments on
18 what's really required to provide service in a safe
19 manner. Those assets cannot be duplicated by a judge and
20 12 jurors whose entire knowledge of gas engineering and
21 operations consists of a one or two-week trial where
22 dueling experts paint diametrically opposed views of what
23 safety measures are really necessary and appropriate.

24 You are also in the unique position of balancing
25 the goal of safety with the inevitable costs that are

1 necessary to achieve that goal. So in -- in your role,
2 you approve rules and regulations that ensure both safe
3 and adequate service on the one hand and at just and
4 reasonable rates on the other hand.

5 Now, let's say you're a juror faced with a
6 sympathetic plaintiff that's been injured. It's easy
7 enough, in hindsight, to say that a utility should have
8 done more than its required to do by your safety
9 regulations. It's easy enough for a judge or jury to say
10 that the utility should have done yearly corrosion
11 inspections, for example, instead of doing them every
12 three years, that the utility should have done a more
13 detailed inspection than what your rules require or that
14 the utility should have taken some other action that's
15 well beyond what you, the Commission, has determined is
16 reasonable.

17 The Judge and the jury can do that because the
18 only thing in front of them is a sympathetic plaintiff
19 that they want to compensate. You, however, have to take
20 into account how much it costs all of the ratepayers to
21 perform inspections three times more frequently than --
22 than they are now or to perform them in significantly
23 greater detail than they are now because it's your job to
24 make sure that the rates are just and reasonable.

25 I would submit to you that this unique balancing

1 that the law has clearly stated should be done by you
2 would be frustrated if you were to become, as Public
3 Counsel suggests, a mere adjunct to judges and juries in
4 determining what the appropriate safety standards for gas
5 utilities are.

6 Finally, Public Counsel has raised the issue of
7 whether this tariff should apply to home sale inspections
8 and the limited service work that Laclede does on a
9 so-called unregulated basis.

10 We believe that it should apply to them.
11 Because what Public Counsel doesn't mention is that the
12 revenues from these services are used to offset the cost
13 of utility service that's charged to all of our customers.
14 As a result, customers today are receiving utility service
15 at rates that are millions of dollars lower than they
16 otherwise would have been because we perform these
17 services.

18 And when we do this work and have our employees
19 on the premises, they are also doing everything that gas
20 employees are mandated to do under your safety rules.
21 That means they have their leak detection equipment on and
22 they have their eyes open to observe any obvious problems.
23 These are all factors that further contribute to public
24 safety.

25 Finally, because the demands on our service and

1 installation department personnel is highly seasonal, the
2 ability to perform this kind of work when those demands
3 diminish help us to keep experienced union employees on
4 the payroll year-round. We think that that's a benefit to
5 our customers as well. And it's a benefit that would go
6 away if we weren't in this business.

7 For all of these reasons, we respectfully
8 request that you approve the revised tariffs as set forth
9 on the testimony of Laclede witness on these -- on the
10 surrebuttal testimony, I'm sorry, of Laclede witness,
11 David Abernathy. Thank you.

12 JUDGE DIPPELL: Thank you. Let's go ahead and
13 have Staff next.

14 OPENING STATEMENT

15 BY MR. BERLIN:

16 MR. BERLIN: Good morning. May it please the
17 Commission. We are presenting today for your approval a
18 proposed liability limitation tariff.

19 I should point out that this tariff is a result
20 of a long process of discussions and many conferences
21 between the company, Public Counsel and Staff. In short,
22 it has been a long work in progress.

23 If I were to sum up in one quick sound byte what
24 this tariff is about, it is this: This tariff is about
25 the balancing of interests. It is about the balancing of

1 interests of all ratepayers and doing what is right to
2 serve the interests of all ratepayers and doing right in
3 recognition of some unique policy implications.

4 Throughout this process, the Staff has tried to
5 balance the interests of individual claimants with the
6 interests of the company. We have tried to balance those
7 interests in a way that protects the interests of the
8 entire body of ratepayers.

9 Now, that said, Staff believes we have reached a
10 point in this process where we need to put the matter of
11 balancing of interests and the policy issues raised by
12 this tariff before the Commission. And depending upon
13 your view of how the tariff balances these interests, in
14 light of the policy matters it raises and depending on
15 your view of the ratepayer interests served by the tariff,
16 you may decide to approve the tariff or to reject it.

17 I will talk about policy matters that make
18 Laclede different from other utilities, indeed, different
19 from other businesses and why the liability limitation
20 provisions of this tariff strike a sensible and reasonable
21 balance that serves the interests of all of Laclede's
22 customers.

23 We do not believe the tariff language to be
24 perfect, but we do believe it to be reasonable. That
25 said, I would like to make the following points about this

1 tariff: First, about the justness or legality of the
2 proposed tariff.

3 The Commission may approve a liability-limiting
4 tariff as this tariff is proposed. Case law provides that
5 a utility may limit its liability on the theory that by
6 doing so, the ratepayer is protected from paying higher
7 rates.

8 Case law is clear that no tariff may limit a
9 utility's liability for gross negligence, recklessness or
10 misbehavior. The Commission has approved liability
11 limiting tariffs in the past, though not a tariff quite
12 like this. The situation here is different, and I will
13 explain why later in my comments.

14 The Commission may approve this tariff under the
15 authority granted it by 386.250 and the powers conferred
16 upon the Commission by 393.140. The tariff references and
17 it complies with all applicable gas safety regulations.

18 Nowhere does this tariff excuse the company from
19 complying with gas safety regulations. The company must
20 do things right before the protections of this tariff
21 apply. That is, the company must comply with all of its
22 obligations and duties under the gas safety rules before
23 the company may avail itself of the protections under the
24 tariff.

25 Nowhere does the tariff excuse the company from

1 gross negligence, recklessness or misbehavior. Again, I
2 want to emphasize, case law is clear that no tariff may do
3 that.

4 Second, in our review of the company's proposed
5 tariff, our goal has been to try to set reasonable time
6 periods for customers to bring claims against the company,
7 time periods that mark where company responsibility ends
8 when the company has performed inspection testing or
9 service work on customer equipment.

10 And let me flesh this out a bit. To understand
11 why we need reasonable time periods, we must first
12 recognize two unique, but significant policy concerns that
13 bear on the company when it is on customer property and
14 when it works on customer equipment.

15 A first concern, Missouri is unique, a unique
16 state, because it places an affirmative duty on gas
17 utility companies to conduct a visual, on-site inspection
18 of customer equipment before the company turns on the gas.

19 This limited on-site inspection is not required
20 by DOT regulations. The on-site inspection, as it is
21 required by Commission rule, is more stringent than the
22 DOT regulations. The Commission's rule gives Missouri
23 customers an extra margin of safety before gas service is
24 turned on.

25 Because the Commission requires that limited

1 inspection, the fact that the company was on the property
2 at some point in time should not be used to hold the
3 company responsible for customer equipment indefinitely.

4 Another matter of policy -- another -- excuse
5 me. Another matter of policy bearing on the company and
6 making the company unique from other utilities is the
7 exemption the Legislature has permitted under the HVAC
8 statute. That statute grandfathers Laclede and allows the
9 company an exemption to perform and sell HVAC-related
10 services as the Laclede Gas Company, the regulated
11 utility.

12 The Commission, by its own rule, has granted
13 Laclede Gas Company an exemption to sell HVAC services as
14 permitted by the statute. Revenues and costs of certain
15 HVAC services and from the required on-site inspection are
16 passed on to ratepayers in their rates.

17 Recognizing that there becomes some point in
18 time where company responsibility must end, or if there is
19 no end to that responsibility, the company would have
20 unlimited cost exposure for anything that happens on the
21 customer side, in effect, making the utility the insurer
22 of last resort.

23 That is what we hope to avoid with this tariff.
24 We want to avoid Laclede becoming an insurer of customer
25 equipment. Unless you are an insurance company that can

1 pick and choose its customers, and Laclede Gas Company is
2 not that, it just makes good business sense.

3 And here's why. We must also remember that
4 Laclede is a monopoly service provider. Unlike other
5 businesses, it cannot deny service to customers. It
6 cannot pick and choose its customers. And unlike a
7 private business, Laclede must follow the Commission's
8 safety rules in all that it does.

9 Although the company bears the cost of settling
10 and defending claims, we must remember who is behind the
11 curtain, who pays the costs. All Laclede ratepayers pay
12 the cost of settling and defending claims are passed on in
13 its rate and all Laclede ratepayers pay these costs in
14 their rates.

15 This tariff is sensible because it provides
16 clarity and because it defines the relationship between
17 the individual customer and the company. And it does so
18 by providing reasonable limitations to where the company's
19 responsibility ends and where the customer's
20 responsibility for his own equipment really begins.

21 These provisions serve the greater interests of
22 all Laclede ratepayers because all Laclede ratepayers are
23 on the hook to pay all claims against the utility, all
24 claims except those where there is a finding of gross
25 negligence.

1 Our goal with this tariff and its recommended
2 non-incident operational time periods is not to keep
3 claimants from bringing claims against the company. Our
4 goal is to keep the company's ratepayers from becoming
5 insurers of last resort for anyone making any claim at any
6 time simply because, at one point in time, Laclede has
7 been on the property or because Laclede had done some
8 Commission-mandated inspection or Commission-authorized
9 service work on customer equipment.

10 Now, does Staff believe the 60 winter day
11 non-incident operational period for space heating
12 equipment and the 90-day period for other gas appliances
13 to be the exact right number of days? No. We are not
14 saying the 60 and 90-day periods are necessarily the right
15 number of days.

16 But we do believe the proposed 60 and 90-day
17 non-incident operational time periods as they are applied
18 to the situations in this tariff are reasonable and they
19 are sensible. We believe these time periods are
20 reasonable because they are similar to the warranty
21 provisions -- to the warranty time periods that are
22 offered for similar work done by HVAC contractors.

23 As to the ultimate impact of this tariff, we
24 recognize we do not know all impacts with certainty.
25 There are as many scenarios as there are customers. That

1 said, we seek -- we see a need to closely monitor this
2 tariff should the Commission approve it.

3 And we have provided reporting provisions in the
4 tariff to do just that. So we may fully evaluate the
5 tariff and its possible impact on customer rates, the
6 tariff includes provisions requiring the company to report
7 to Staff and OPC on an annual basis regarding the impacts
8 of this tariff so that we can review those impacts in the
9 second general rate case.

10 Also, any party may propose changes to the
11 tariff in the context of a rate case proceeding or in a
12 complaint proceeding. In addition, the Staff has
13 recommended a three-year Sunset provision should the
14 Commission feel that to be appropriate.

15 In summary, this tariff takes into account that
16 Laclede is not similarly situated to other utilities
17 because of the duties placed on it and because of the
18 services it provides to its customers.

19 This is the first time liability limitation
20 provisions of this type have been brought before the
21 Commission. We think that likely similar issues may
22 appear before the Commission in the future.

23 Staff believes this tariff to be just and
24 reasonable because this tariff is allowed by law and
25 because it defines the company/customer relationship,

1 which is what a tariff is supposed to do.

2 Staff recommends the tariff for your approval
3 because it fairly balances the interests of an individual
4 customer with the interests of the company in a way that
5 serves the greater interests of all Laclede ratepayers.

6 Because this tariff brings up unique policy
7 concerns and because the reasonableness of this tariff
8 turns on the balancing of interests, we invite your
9 comments and questions.

10 Today, the Staff is presenting four witnesses to
11 appear at this hearing for cross-examination and to answer
12 your questions. These four witnesses have submitted
13 pre-filed surrebuttal testimony and are available for your
14 questions about the proposed tariff.

15 Natelle Dietrich will testify on policy
16 concerns. Bob Leonberger will testify on gas and pipeline
17 safety matters. Tom Imhoff will testify on matters
18 related to the tariff. And Kim Bolin will testify on
19 accounting matters and how costs and revenues are booked
20 by the company.

21 I appreciate your consideration, and this
22 concludes my opening statement. Thank you.

23 COMMISSIONER JARRETT: Judge, I have just a
24 quick question of Mr. Berlin.

25 JUDGE DIPPELL: Sure.

1 COMMISSIONER JARRETT: Mr. Berlin, you asked --
2 you indicated that there was case law supporting these
3 type of exculpatory provisions and tariffs. Do you have
4 those cases and cites handy?

5 MR. BERLIN: I -- I do have some. I don't -- I
6 don't have all of them. There's quite a large body of
7 case law. I can -- I can address it to some extent, if
8 you'd like.

9 COMMISSIONER JARRETT: Sure.

10 MR. BERLIN: Okay. In Western Union
11 Telegraph v. Steve Brothers, United States Supreme Court
12 reasoned that minus liability limitations, utilities would
13 be exposed to an incredible amount of liability claims
14 that would significantly raise the rates charged to
15 customers.

16 And it -- it determined that liability
17 limitations are reasonable and needed. Missouri, in
18 Warner v. Southwestern Bell, upheld a tariff liability
19 limiting provision as applicable only in regards to
20 negligence of the -- Telco.

21 And there's quite a -- quite a few others that
22 -- that deal with different aspects of liability limiting
23 tariffs.

24 I would also point out that in Natelle
25 Dietrich's surrebuttal testimony, she cited two tariffs

1 that the Commission has approved, while not exactly like
2 this one are similar or released liability limitation
3 tariffs such as -- I believe she included the KCPL tariff
4 and the MAWC tariff.

5 COMMISSIONER JARRETT: Well, I will assume -- I
6 will assume that you will provide a -- a larger list of
7 these cases in your post-hearing briefs?

8 MR. BERLIN: Yes, sir.

9 COMMISSIONER JARRETT: Thank you.

10 JUDGE DIPPELL: Are there any other Commissioner
11 questions for Mr. Berlin?

12 COMMISSIONER KENNEY: No.

13 COMMISSIONER DAVIS: Mr. Berlin, real quick,
14 there is no issue of fact here, correct?

15 MR. BERLIN: I -- I can't say that because it's
16 -- it's -- it -- we're looking at all the facts and
17 building a tariff around them. And so --

18 COMMISSIONER DAVIS: Okay. So there are --
19 there are facts.

20 MR. BERLIN: There are facts. And those facts
21 are in the prefiled testimony of -- of Staff's witnesses.

22 COMMISSIONER DAVIS: Okay.

23 JUDGE DIPPELL: Anything else for Mr. Berlin?
24 Thank you, Mr. Berlin. Public Counsel?

25 OPENING STATEMENT

1 BY MR. POSTON:

2 MR. POSTON: Good morning, and may it please the
3 Commission. I believe everyone in this room would agree
4 that Laclede's customers should not have to pay for
5 frivolous lawsuits. But we believe the issues created by
6 Laclede's tariff proposal go well beyond that issue.

7 The issue of this case, as presented by the
8 parties, appears simple. Is Laclede's proposal --
9 proposed tariffs just and reasonable? But when you
10 explore each of these concepts, first, whether the tariff
11 is lawful and, second, whether the tariff proposal is
12 reasonable, the issues become more complicated.

13 I don't intend to address these in any great
14 detail in this opening statement. I'll save that for my
15 legal arguments for the brief. Hopefully, briefs, plural,
16 because I think two rounds of briefs would be helpful in
17 this case.

18 The first subissue, whether the proposed tariff
19 is lawful, includes additional subissues. And I've
20 identified at least three on the lawfulness. First, does
21 the Commission have the authority to limit Laclede's
22 customers' right to file a claim in Circuit court?

23 We don't believe the Missouri Legislature
24 granted the Commission the authority to limit the right of
25 a Missouri citizen to file a claim for injuries or damages

1 in a court of law, especially when that limitation would
2 eliminate Laclede's liability at any time and Laclede's
3 employees when negligent or even grossly negligent.

4 Second lawfulness issue, does the Commission
5 have the authority to limit Laclede's liability for
6 services not regulated by the Commission? We also don't
7 believe the Missouri Legislature gave the -- the
8 Commission the authority to limit liability for services
9 not regulated by the Commission.

10 The tariff proposal could limit liability for
11 unregulated services despite claims to the contrary. But
12 I think in the other opening statements, you heard support
13 for -- for that.

14 The third lawfulness claim, does the PSC have
15 the authority to determine minimum federal safety
16 standards to be the limit of Laclede's responsibility
17 regarding safety?

18 I question the authority to find that a
19 utility's obligations towards its customers are met as
20 long as the utility meets the minimum standards. In my
21 mind, this essentially removes the word "minimum" from
22 these standards because Laclede would no longer be
23 obligated to go beyond these standards even if the
24 situation required additional safety precautions. These
25 are the reasons we believe the tariff is unlawful.

1 The second subissue, whether the proposed tariff
2 is unreasonable also includes subissues, and I've
3 identified at least six. First, is it reasonable to
4 absolve Laclede from liability even where Laclede was
5 negligent or grossly negligent? We think the tariff would
6 do that, and we think the answer to that question is no,
7 it's not reasonable.

8 Two, is it reasonable to limit the liability for
9 an unregulated service through a tariff when Laclede's
10 competitors for this unregulated service are not afforded
11 the luxury of limiting their liability through a tariff?
12 We answer that one with no, it's not reasonable.

13 Three, is it reasonable to limit liability in
14 the case where the utility hasn't even demonstrated that
15 this is a real issue? From what we've reviewed, we
16 believe most of Laclede injuries and damages occurred as a
17 result of unregulated services, which should not be the
18 responsibility of Laclede's regulated customers.

19 If, in fact, Laclede's customers are paying
20 liabilities for unregulated services, that issue should be
21 dealt with in Laclede's next rate case because we believe
22 this is prohibited by the Commission's rules for HVAC
23 affiliates. We believe this needs further investigation
24 because consumers should not pay for Laclede's unregulated
25 liabilities.

1 The fourth -- fourth reasonableness issue, is it
2 reasonable to require Laclede's customers to pay for
3 Laclede's legal fees and other costs and expenses
4 associated with instruments related to customer requests,
5 even where a court finds Laclede negligent and liable?

6 We answer this with a no. The proposed tariff
7 would require consumers to pay Laclede's legal fees and
8 other costs in these instances. Fifth, is it reasonable
9 to allow Laclede to alter the union of State and Federal
10 safety regulations by requiring the standards that are
11 explicitly established as minimum standards and now saying
12 those are no longer the floor and are now the ceiling in
13 regards to Laclede's safety obligations?

14 We answer that with no. This could compromise
15 Laclede's incentive to operate safely. Lastly, we believe
16 it is unreasonable to approve a tariff that is ambiguous
17 in its application.

18 For example, a tariff says it applies to costs
19 and revenues that are normally considered in the
20 rate-making process. We assert this is extremely vague
21 and could create unintended consequences.

22 These are the reasons we oppose the tariff
23 provisions. We ask that the Commission reject the tariff.
24 In the alternative, if the Commission wishes to allow
25 Laclede to admit its liability tariff, we ask that the

1 Commission consider the alternative language filed by
2 Public Counsel. Thank you. I'm free for questions.

3 COMMISSIONER JARRETT: I just have a few
4 questions.

5 JUDGE DIPPELL: Go ahead.

6 COMMISSIONER JARRETT: I just want to make sure
7 I understand. You're not arguing that a tariff limiting
8 liability is just, per se, unenforceable. You're arguing
9 that this particular tariff is unreasonable?

10 MR. POSTON: Yes.

11 COMMISSIONER JARRETT: Is That right?

12 MR. POSTON: Yes.

13 JUDGE DIPPELL: Are there any other Commissioner
14 questions for Mr. Poston?

15 COMMISSIONER KENNEY: No.

16 JUDGE DIPPELL: All right, then. Thank you,
17 Mr. Poston.

18 Okay. I'm going to take this opportunity to
19 mention something. You each, in your opening statements,
20 broke down the issues. And that's what I would have liked
21 to have seen in your issues list that you filed rather
22 than the generic, Is this lawful and reasonable. So just
23 as a future hint.

24 COMMISSIONER DAVIS: Judge, can we let the
25 record reflect that Counselor Bob Leonberger -- oh, wait.

1 He's not a counselor, but he's just smiling. Thank you.

2 JUDGE DIPPELL: Let's go ahead, then, and we'll
3 begin with our first witness. And Laclede is --

4 MR. ZUCKER: We'll call David Abernathy. We
5 have a direct testimony --

6 JUDGE DIPPELL: Okay.

7 MR. ZUCKER: -- Which, I guess, is No. 1.

8 JUDGE DIPPELL: Yes. That will be No. 1.

9 MR. ZUCKER: And a surrebuttal testimony.

10 JUDGE DIPPELL: That will be No. 2. Mr.
11 Abernathy, if you would raise your right hand?

12 MR. ABERNATHY: Do you want me to stand up or --

13 JUDGE DIPPELL: Either way.

14 DAVID ABERNATHY,
15 being first duly sworn to testify the truth, the whole
16 truth, and nothing but the truth, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. ZUCKER:

19 JUDGE DIPPELL: Thank you.

20 Q (By Mr. Zucker) Good morning, Mr. Abernathy.

21 A Good morning, Mr. Zucker. How are you?

22 Q Good. Yourself?

23 A Good.

24 Q Are you the David Abernathy that filed direct
25 testimony in this case on July 17th, 2009?

1 A Yes, I am.

2 Q And did you also file surrebuttal testimony in
3 this case on September 29th, 2009?

4 A Yes.

5 Q And do you have those testimonies in front of
6 you?

7 A I do.

8 Q And if you were asked the same questions that
9 are asked in these testimonies today, would your answers
10 be the same?

11 A Yes, they would.

12 Q Do you have any changes to either of these
13 testimonies?

14 A I do. I have one change. We had an error on
15 the --

16 Q On surrebuttal or direct?

17 A Surrebuttal testimony.

18 Q Surrebuttal?

19 A On the Exhibit DPA-1, which is the proposed
20 tariff, there was a mistake in the transcription of that
21 final document. If you look on page 2, line 43 and 44,
22 there was a parens clause put in there for just review
23 purposes only that got left in accidentally. That should
24 be omitted.

25 Q The -- the information in the brackets should be

1 admitted (sic)?

2 A Right.

3 Q It should be omitted?

4 A Right.

5 Q I'm sorry. which page was that on?

6 MR. ZUCKER: Page 2 of Schedule DPA-1 attached
7 to the surrebuttal testimony, lines 43 and 44.

8 JUDGE DIPPELL: Thank you.

9 Q (By Mr. Zucker) Okay. And with that change,
10 would all of your answers to these questions be the same
11 as they were then?

12 A Yes.

13 MR. ZUCKER: Okay. I move for the admission of
14 David P. Abernathy's direct and surrebuttal testimony as
15 Exhibits 1 and 2 in this case.

16 JUDGE DIPPELL: Would there be any objection to
17 Exhibits 1 and 2? Seeing none, then, I will receive those
18 into the record.

19 (Exhibit Nos. 1 and 2 were offered and admitted
20 into evidence.)

21 MR. ZUCKER: Okay. Pass the witness. So
22 cross-examination by Staff?

23 MR. BERLIN: Judge, Staff has no questions for
24 Mr. Abernathy.

25 JUDGE DIPPELL: Thank you. Is there

1 cross-examination by Public Counsel?

2 MR. POSTON: Yes. Thank you.

3 CROSS-EXAMINATION

4 BY MR. POSTON:

5 Q Good morning, Mr. Abernathy.

6 A Good morning.

7 Q My name is Marc Poston, and I am counsel for the
8 Office of Public Counsel.

9 A Okay.

10 Q I'd like to start by looking at the examples
11 that you cite in your testimony that you say raise the
12 need for this tariff change.

13 And if you could please turn to page 3 of your
14 direct testimony. And this is a Q and A that starts on
15 line 3 where you ask and you provide examples of the kinds
16 of unwarranted claims that the company has to defend.

17 And the first one you cite is you state,
18 "Laclede has been sued for an explosion that occurred when
19 a third party attempted to steal gas." Do you see that?

20 A Yes, I do.

21 Q And that first example cited, isn't that it true
22 that no lawsuit was filed as a result of this incident?

23 A Well, there was two here where people were
24 stealing gas. One, a suit has not been filed yet, and one
25 the suit has.

1 Q And I'm just referring to that first one.

2 A Okay. I'm not sure if that's the first one or
3 the last one there I'm referring to. But yes. And I can
4 go by names if you want. But the one in which we're
5 talking about is one that occurred on College Avenue.

6 Q Okay.

7 A Does that help clarify it? The one where we
8 have a suit filed is a guy by the name of McGee.

9 Q Okay. And I'll get to that one a little later,
10 but I'm talking about the one -- there was no lawsuit
11 filed in one of them at least?

12 A We're still expecting it, but it has not
13 occurred yet. You're right.

14 Q Okay. And the second example you cite is where
15 a squirrel's nest in a flu caused injuries?

16 A Yes.

17 Q Okay. And isn't it true that one of the claims
18 made in that case was that Laclede was negligent in
19 performing a home sale inspection?

20 A Yes. There was two inspections. There was home
21 sale and there was the normal turn-on inspection both in
22 that case.

23 Q Okay. And isn't it true that the plaintiff in
24 that case requested over half a million in damages?

25 A Oh, one of the two plaintiffs did, yes.

1 Q And isn't it also true that Laclede settled this
2 case?

3 A Yes.

4 Q And paid over half a million in damages; is that
5 correct?

6 A Can we go off the record for a second, please?

7 JUDGE DIPPELL: May I ask why?

8 A It's a settlement. So confidential settlements.

9 JUDGE DIPPELL: Okay.

10 A And we --

11 MR. POSTON: Okay. The documents I was provided
12 were not marked as confidential, but I'd be happy to treat
13 it that way.

14 A I thought we submitted it as highly
15 confidential, did we not?

16 MR. ZUCKER: I thought we did, too.

17 JUDGE DIPPELL: I don't believe I -- if it was
18 anything that was submitted that was attached to the
19 testimony or --

20 MR. ZUCKER: No. You would have seen it.

21 MR. POSTON: no. It was the documents that they
22 provide. Actually, it was a DR response to Staff that we
23 received that --

24 JUDGE DIPPELL: Okay. If we need to go
25 in-camera, we can, but --

1 MR. ZUCKER: Obviously, the lawsuit itself is a
2 public document, so the names of the plaintiffs are
3 public, but the settlements are confidential.

4 JUDGE DIPPELL: Okay.

5 A I mean -- yeah.

6 JUDGE DIPPELL: Is -- do you need to ask your
7 questions in-camera, then, Mr. Poston?

8 MR. POSTON: It appears so. Yes.

9 JUDGE DIPPELL: Okay. All right, then. We can
10 go ahead and go in -camera. I believe we'll -- we'll have
11 to ask the people that aren't privy to highly confidential
12 information, then, in this case to please leave the room.
13 And we'll try to remember to send somebody out to let you
14 know when we're finished. We have some visitors in the
15 room this morning, so --

16 MR. POSTON: And, really, probably only three
17 questions will be confidential. But we might as well say
18 stay in-camera because I don't have that many questions
19 along this line.

20 JUDGE DIPPELL: Okay. Let me go ahead -- let me
21 fix the -- we can go in-camera.

22 REPORTER'S NOTE: At this point, an in-camera session was
23 held, which is contained in Vol. 3, pages 39 through 50.

24

25

1 JUDGE DIPPELL: All right. We're back on the
2 public session, then. And I asked Mr. Poston -- he asked
3 a couple of questions that I thought maybe could be on the
4 public record. So, if you don't mind, Mr. Poston, to
5 repeat those couple of questions and finish your cross?
6 Thank you.

7 MR. POSTON: Okay. Thank you.

8 CONTINUED CROSS-EXAMINATION

9 BY MR. POSTON:

10 Q We just walked through examples where you had
11 stated these were examples that raise the need for this
12 tariff. And I asked on page 4 of your direct testimony,
13 towards the top, you state that these claims and other
14 frivolous actions expose ratepayers to significant and
15 unnecessary costs and financial exposure. Is that -- is
16 that true? Is that accurate?

17 A Yeah. That's what it states. Yes.

18 Q And are you saying that ratepayers paid for
19 these settlements?

20 A Yes. They would eventually, I believe, pay for
21 these through the cost of service. Yes.

22 Q Did ratepayers have any say in the settlement?
23 Was that decision made solely by Laclede?

24 A It was management decision with, of course,
25 assistance of counsel.

1 Q And do those amounts going into rates, do you
2 know if they separate out the liabilities that were a
3 result of unregulated services?

4 A I do not know that.

5 Q I'd like to move on to page 7 of your direct.
6 On page 7 of your direct, you discuss the 60 and 90-day
7 periods in the proposed tariff where Laclede would remain
8 liable. And you say these time limitations are supported
9 by service contracts of unregulated firms; is that -- is
10 that accurate?

11 A Yes.

12 Q Do you recall a Public Counsel data request
13 where we asked for all the service contracts reviewed by
14 you in making that statement?

15 A Yes. I believe there were several requests.

16 MR. POSTON: Can I approach the witness?

17 JUDGE DIPPELL: Yes.

18 MR. POSTON: I'd like to have something marked,
19 if I could.

20 JUDGE DIPPELL: All right. We'll be on Exhibit
21 No. 3.

22 MR. POSTON: And this is a highly confidential
23 exhibit.

24 JUDGE DIPPELL: Okay. So it would be Exhibit
25 3-HC. Do you have, by any chance -- is the entire exhibit

1 HC or --

2 MR. POSTON: I think so. Yes.

3 JUDGE DIPPELL: Okay.

4 MR. POSTON: Yes.

5 JUDGE DIPPELL: Okay.

6 Q (By Mr. Poston) Please let me know when you've
7 had an opportunity to look this over.

8 A We can go ahead.

9 Q Okay. And have I just handed you a copy of the
10 service contracts that you reviewed?

11 A I would assume that's true. I don't have them
12 exactly, the ones I gave you in front of me, but I would
13 assume that's true.

14 Q And that has been marked Exhibit 3-HC. Can you
15 please show me where in these agreements that an
16 unregulated firm limits their liability for injuries and
17 damages?

18 A Well, what we looked at with these documents is
19 that --

20 Q I'm just -- I'm asking you to show me where --
21 point in here -- I'm not asking you what you looked at.
22 I'm just wanting you to show me where injuries of damages
23 were limited by these service contracts.

24 A Okay. When we looked at these documents, we
25 found that each of them had different warranty or

1 limitation liability periods in them from anywhere from 30
2 to 90 days generally. I mean, there was different ones.

3 We also called several firms and asked them
4 questions, too, about what they did with limiting their
5 liability and how long they would be liable for certain
6 things.

7 As you can see on the first page of the first
8 one you gave me, there was a 30-day warranty notice in
9 there.

10 Q Okay. And that's for -- for parts and labor; is
11 that correct?

12 A Yes.

13 Q Okay.

14 A I mean, I don't know if that's correct for
15 everything, but it says labor there. It says parts.

16 Q Okay. Once again, can you point to somewhere in
17 here where it specifically says liability is limited for
18 injuries and damages in any one of these service contracts
19 of these unregulated firms or companies?

20 A Well, maybe I -- I don't quite understand your
21 question. But if you're trying to make the point, then,
22 that warranty is different than liability -- is that the
23 question?

24 Q That's -- that's why I'm getting at, yes.

25 A Okay. I would say some people would make that

1 distinction. Some people wouldn't. If you call these
2 individuals and talk to them, they'll tell you that they
3 believe that their liability should end the day after they
4 do the service. That's their belief.

5 Q Okay. Well --

6 A But, obviously, that's not going to happen. So
7 what they try to do, of course, is limit that by coming up
8 with something -- like here's one for a year.

9 Q Where are you looking?

10 A I'm looking at the second page here. I mean, it
11 depends, I guess, on what you consider to be parts and
12 labor. If the individual's labor causes a problem with a
13 furnace and the furnace then emits CO and someone is
14 injured, I would say that that -- if that was done after
15 the 30 days, they've argued that they're not liable
16 because their labor caused the incident.

17 Q But there's nowhere specifically in here that
18 identifies injuries as damages as being limited by the
19 liability; is that correct?

20 A I don't know unless I look at each one of them.

21 Q Please do.

22 A If you want me to -- you want me to look
23 specifically for the language injuries and damages, I
24 guess, right?

25 Q Yes.

1 A I do not see the term "injuries and damages." I
2 just see the limitation.

3 Q Okay. I'd like to move on to your surrebuttal
4 testimony.

5 MR. POSTON: Oh, your Honor, I'd like to offer
6 Exhibit 3-HC.

7 JUDGE DIPPELL: Would there be any objection to
8 Exhibit No. 3-HC?

9 MR. ZUCKER: No, your Honor.

10 MR. BERLIN: No, Judge.

11 JUDGE DIPPELL: All right, then. I will admit
12 that.

13 (Exhibit No. 3-HC was offered and admitted into
14 evidence.)

15 Q (By Mr. Poston) Okay. And I'm looking at page
16 2 of your surrebuttal.

17 A Okay. I'm there.

18 Q Is it accurate to state that your testimony
19 states that safety standards shouldn't be set in
20 accordance with the whims of a judge or a jury?

21 A Yes.

22 Q And can you please give me an example where a
23 judge or jury set a safety standard for Laclede?

24 A Off the top of my head, no. But I can give you
25 an example of where one could.

1 Q That's not -- I just wanted to ask you where --
2 just give me an example where it actually happened, where
3 a safety standard was set for Laclede. And I believe he
4 answered question.

5 A Well, I'm trying to -- if you'll give me some
6 time, maybe I can recollect something. On a cases-wise, I
7 don't have anything that has occurred recently.

8 Obviously, when we go out in the field and do
9 something and something occurs, we change our standards
10 internally, if that's what you're looking for.

11 I mean, if you're looking for a specific case,
12 no. I've got one pending I think might cause a problem,
13 but we can -- actually, I can talk about that later.

14 Q Okay. If you could please turn to your modified
15 tariff proposal that's at the end of your surrebuttal.

16 A Uh-huh.

17 Q And on page 2 -- okay. At line 8, there is the
18 phrase that "Customers shall indemnify, hold harmless and
19 defend the company from and against any and all
20 liability." Do you see that?

21 A Yes. Yes.

22 Q Okay. Would you please define indemnify?

23 A That -- indemnify in a legal term means to -- if
24 you have to pay damages to, say, a third party because of
25 your alleged negligence, the party that indemnifies would

1 then pick that up, would pay that.

2 Q That would be Laclede's customers would pay the
3 damages?

4 A Right. The reason this language is in there is
5 that --

6 Q I'm not asking that question.

7 A You don't want to know why the language is in
8 there? I mean, there's --

9 Q I'm asking you direct questions. If you could,
10 just please answer the question.

11 A Okay.

12 Q Your attorney will follow up with you.

13 A Will do.

14 Q And would you please define "hold harmless?"

15 A That means not holding someone liable.

16 Q Okay. And will you define "defend the company?"
17 Would that include paying Laclede's legal fees?

18 A Yes.

19 Q And I'd like to discuss, just for a minute, the
20 home sale inspections that Laclede performs. And would
21 you agree that performing a home sale inspection that
22 Laclede inspects fuel lines inside the home?

23 A Yes.

24 Q And do you know what Laclede charges for charges
25 for home sale inspections?

1 A I'm not for sure, but I think it's around \$150.

2 Q Do you have the testimony of Tom Imhoff, Staff
3 witness Tom Imhoff?

4 A I think I do. Yes. It's right here.

5 Q Okay.

6 A The rebuttal testimony?

7 Q Surrebuttal, I believe. The Schedule 13.

8 A Okay. I'm there.

9 Q Okay. And have you seen this -- this document
10 before?

11 A I have seen Mr. Imhoff's testimony before, yes.

12 Q Okay. Are you familiar with this document? Do
13 you know what this is?

14 A Not really. No.

15 Q Okay. At the top, it says, Laclede Gas Company,
16 Case No. GE-2000-610, Attachment A; is that correct?

17 A Yes.

18 Q Do you -- are you aware that Laclede sought an
19 exemption to allow Laclede to continue providing a list of
20 unregulated services?

21 A I'm not really that aware of it. No.

22 Q Okay. Well, looking at this list, would you
23 agree that this list shows the unregulated services
24 provided by Laclede?

25 MR. ZUCKER: I'm going to object, your Honor.

1 He has already said that he's unfamiliar with the case.

2 JUDGE DIPPELL: He's just asking him if he knows
3 if these are services, this list, so he can answer yes or
4 no.

5 A I think some of these things, obviously, we
6 don't -- we don't determine to be regulated because the
7 items are, in regulatory jargon, below the line. But we
8 do do some work on appliances and will do some
9 installations. And I believe that revenue is above the
10 line as part of the regulated business.

11 Q (By Mr. Poston) Well, which ones on this list
12 would you identify as being above the line?

13 A I would say any kind of work on connecting maybe
14 a range or doing some repairs on a range, dryers, a grill.
15 We don't work on all appliances. We work on some.

16 Q And does the Public Service Commission set the
17 rates for those, or are they -- do they regulate those in
18 any way?

19 A Well, they do. Those items that I just
20 identified I thought were regulated. The cost and the
21 revenue are in the rates above the line.

22 Q And that's -- that's your definition of
23 regulated? When it's above the line, then, it's
24 regulated, in your mind?

25 A Sure. Yes. The ratepayer is getting the

1 benefit of the activity.

2 Q Are you aware of any services that are not on
3 this list?

4 A Yeah. There's things that we do, like
5 inspections, you know, home sale inspections. There's --
6 there's a regulated inspection work, as you call it, or
7 the mandated regulatory inspections.

8 Q And what --

9 A Is that what you're asking me?

10 Q Yeah. Just a service that's not on this list.

11 A I think there are some. I don't know if I have
12 a complete list in my head here, but there are probably
13 things that we do, regulated-wise, that aren't on here,
14 yes.

15 Q Okay. Just a minute. I'd like to -- I don't
16 have that many more questions. Just a few. If you could
17 turn back to your modified tariff proposal.

18 A The one that is in the surrebuttal testimony?

19 Q Yes. Okay. I'd like to look on page 2, and the
20 paragraph that starts on line 16.

21 A Yes. I'm there.

22 Q And it -- and it says, "A non-incidental
23 operation period shall begin on the date that company
24 representatives were last inside the customer's place of
25 business or premises to perform testing, inspection or

1 other work for which the costs and revenues are normally
2 considered in the rate-making process." Do you agree
3 that's what that says?

4 A Yes.

5 Q Do you agree that this language would apply to
6 home sale inspections?

7 A Yes.

8 Q Do you agree that it applies to gas appliance
9 inspections, including furnaces, water heaters, ranges,
10 grills, lights, air conditioners, dryers, gas logs and
11 pull heaters?

12 A Yes. Because when we go into a home to do the
13 mandated inspection of the home sale, we look at those
14 items.

15 Q Do you agree that it would also apply to gas
16 piping and appliance repair?

17 A I'm not a complete authority on everything our
18 guys do, but I think, yes, it would.

19 Q Do you agree it would also apply to checking and
20 installing gas appliances?

21 A I guess so. I don't know. I'm trying to think
22 it through. But, yeah, I think you're right.

23 MR. POSTON: That's all I have. Thank you.

24 JUDGE DIPPELL: Thank you. Are there questions
25 from the Bench for Mr. Abernathy? Commissioner Davis, do

1 you have any questions?

2 COMMISSIONER DAVIS: No.

3 JUDGE DIPPELL: Okay. Commissioner Jarrett.

4 CROSS-EXAMINATION

5 BY COMMISSIONER JARRETT:

6 Q Good morning, sir. I just have maybe one or two
7 questions.

8 A Good morning.

9 Q I am looking at the revised tariff proposal
10 language that was submitted and its Schedule 1 up at the
11 top. I don't know -- it may be attached to your
12 testimony. But I'm looking at the one that Laclede filed
13 in EFIS.

14 MR. ZUCKER: Commissioner, are you looking at
15 the direct testimony or the surrebuttal?

16 COMMISSIONER JARRETT: I'm actually looking at
17 the filing, Laclede Gas Company's submission of revised
18 tariff language.

19 MR. ZUCKER: Okay. Okay. Okay.

20 JUDGE DIPPELL: That's the 9/23 filing of it.

21 MR. ZUCKER: Right. Which would be the same as
22 the --

23 A Surrebuttal.

24 MR. ZUCKER: -- surrebuttal.

25 JUDGE DIPPELL: All right. Okay.

1 Q (By Commissioner Jarrett) Does the tariff --
2 does the tariff, I guess, exculpate Laclede from all
3 responsibility, or does it only protect it from negligent
4 acts and not willful or wanton conduct?

5 A Well, as you've heard counsel say in opening
6 statement, common law, I think for a visit from protecting
7 was from gross negligence. So, obviously, a court would
8 look at this and just say, I see gross negligence here,
9 this is not going to apply.

10 It would -- what it does -- its intent is to not
11 protect us from our negligence, but to protect us when
12 we're not negligent. That's the intent.

13 We've got a lot of instances where Laclede
14 really has done nothing wrong and yet been drug into
15 lawsuits in which they have serious risks for large damage
16 amounts due to the injuries to plaintiffs.

17 Q Let me see if I get this straight. You're
18 saying that this tariff is not to protect you from simple
19 negligence?

20 A If we're negligent -- the point is if we're
21 negligent, we're not obeying the Commission's standards
22 and the rules set by the Feds and et cetera, we're going
23 to still have liability.

24 Q Well, that's a different question. I mean, what
25 you're saying is that if you follow all the standards and

1 regulations, then you're not negligent?

2 A Right.

3 Q Is that what you're saying?

4 A Yes. And we're trying to avoid, then, going --
5 having to go to court even though we're not negligent.

6 COMMISSIONER JARRETT: Okay. Gotcha. No
7 further questions.

8 JUDGE DIPPELL: Commissioner Kenney?

9 CROSS-EXAMINATION

10 BY COMMISSIONER KENNEY:

11 Q Slightly related, how would that be any
12 different than -- than just asserting in some type of
13 dispositive motion Laclede's compliance with the
14 applicable Federal and State standards?

15 A Well, we do that now. And we still get expert
16 witnesses who come in to court and say that we should have
17 done -- is that me?

18 JUDGE DIPPELL: I'm sorry. I'm not sure. We're
19 getting a little bit of feedback. So if my IS people are
20 listening, I'll ask for their assistance.

21 A Who still say that we should have done something
22 more, even though we've met those standards. I mean, an
23 example is this McGee case we mentioned earlier where the
24 individuals stole gas by knocking various locks off
25 meters.

1 The plaintiff's theory in that case is now that
2 -- the only theory he's got is that we should have had
3 better locking mechanisms on the meters so they wouldn't
4 be broken off.

5 Q And is it your position, then, that this tariff
6 would defeat that argument? I mean, guess I -- I'm asking
7 you to predict what a judge would rule. But, I mean --

8 A I think, in a lot of cases, we hope it would
9 protect you. I mean, obviously, a judge may rule
10 otherwise.

11 COMMISSIONER KENNEY: Thank you.

12 COMMISSIONER JARRETT: Judge, I do have one more
13 question. I'm sorry.

14 JUDGE DIPPELL: Go ahead, Commissioner.

15 COMMISSIONER JARRETT: I'm sorry. I do have one
16 more question.

17 CROSS-EXAMINATION

18 BY COMMISSIONER JARRETT:

19 Q So is it your position that if a plaintiff can
20 come up with some theory that you are negligent even
21 though you followed all of the rules and standards that
22 then this tariff will not protect you?

23 A No. Our intent is the tariff would protect us.

24 Q Even if a plaintiff can come up with a theory
25 that Laclede is negligent despite the fact that they

1 followed all of the standards and rules?

2 A The idea being we're rather unique because we
3 have so many -- because of our requirements, so many, I
4 guess I'll call them, touches of the customer. We're
5 there a lot of so a lot of duty being assumed.

6 So the point being is that if we've met those
7 duties that we're required to meet that the idea that
8 something unique or -- I mean, a lot of plaintiff theories
9 are not so much things that can be proven themselves. The
10 point is I can't disprove them, and so I -- they get in
11 front of a jury. And then it's, you know, kind of a roll
12 of the dice.

13 COMMISSIONER JARRETT: Thank you.

14 A Huh-uh.

15 JUDGE DIPPELL: Thank you. I have just a few
16 questions for you myself, Mr. Abernathy.

17 CROSS-EXAMINATION

18 BY JUDGE DIPPELL:

19 Q On page 2 of your direct testimony, you say
20 something about, All too often, these claims -- at line
21 15, All too often, these claims involve attempts by
22 attorneys and the client to hold the company and its
23 customers liable basically for those situations where you
24 feel that Laclede isn't -- does haven't any liability.
25 Can you quantify the "all too often" for me? Do you know

1 how often?

2 A Well, I've only been at Laclede for five years,
3 so -- and I've got limited experience. But in my time in
4 the five years, I've probably had, I don't know,
5 approximately ten cases where I would argue that -- that
6 have been litigated that I would argue that -- or in my
7 term, in my testimony, frivolous that are attempts to try
8 to implicate Laclede.

9 Q And how many of -- I guess, these kinds -- in
10 the, you know, billing disputes or whatever, but how many
11 of these kinds of liability cases? Ten -- ten frivolous
12 ones?

13 A Well, again, we're talking about liability
14 cases. It wouldn't be applicable to what the tariff is
15 trying to take care of. And while I had mentioned these
16 ten that have been litigated that I think would be, in my
17 mind, frivolous, there have probably been claims that have
18 been legitimate claims against Laclede that we've probably
19 paid. Nothing major that can I think of. But there are
20 claims out there.

21 Q Have you -- in the five years that you've been
22 there, have you litigated claims where Laclede was -- or
23 does your ten cases include ones that you have litigated,
24 or have those all been settled?

25 A They've been settled.

1 Q Okay.

2 A The only case I've litigated really of a great
3 magnitude was an automobile case we had a few years ago.

4 Q Okay. And --

5 A I'm talking about -- when I say magnitude,
6 request for dollars from plaintiffs.

7 Q Okay. And so you haven't litigated any cases
8 where Laclede was actually found to have been negligent
9 or --

10 A Not --

11 Q -- on the way to trial?

12 A Well, not me personally on -- from the time I
13 have been there managing this department and respect to
14 items behind the meter. No.

15 Q Because I'm --

16 A But we have litigated other cases that we have
17 lost in court.

18 Q I'm just trying to get an idea of how many of
19 these kinds of claims compared to what you would consider
20 legitimate claims, maybe. And are you aware of any other
21 state that has laws or tariffs that limit liability in
22 this manner?

23 A Yes. In fact, when I started this process, what
24 we did, we looked at a number of different tariff
25 provisions in certain states to see if we could kind of

1 compile the best ideas from various jurisdictions to see
2 how they would work.

3 For example, Iowa and Illinois have tariffs that
4 are similar to what when we're asking for here in some
5 respects. One of the things that brought this to our
6 attention is that in both those states, there was issues
7 about warnings to customers about flux connectors on
8 stoves.

9 And the courts, in an effort, I think, to try to
10 get the case past summary judgment, more or less ruled
11 that all of the warning -- the tariff said that if you
12 give these warnings, it's sufficient.

13 The Court said yeah, but it didn't specifically
14 address this issue, and so you should have given this
15 warning, also. And so we said, Okay, let's see how we can
16 address that issue when we write this tariff.

17 And there's some language in California I looked
18 at and other states. It's just kind of a conglomeration
19 of different states' ideas.

20 Q And on page 4 of your surrebuttal, you talk
21 about -- at line 11, you say, "This provision is similar
22 to other longstanding utility provisions regarding
23 liability for interruption of service, including those of
24 Southwestern Bell and Aquila network dating back at least
25 to 1997 and 2004 respectively." Did you -- do you have

1 citations in those particular tariffs?

2 A Not with me, no.

3 Q Okay. Can you make sure that you include it in
4 filing of briefs --

5 A Counsel may have it.

6 Q -- a cite to those?

7 A And there are a number of tariffs in state
8 already that do some of these things. For example, I know
9 from my other experience, the water company has a tariff
10 that says if the indoor meter leaks in someone's basement,
11 all the person receives no matter how much damage is done
12 is according to one quarterly water bill. I know for
13 years Southwestern Bell had exoneration for errors for
14 Yellow Page ads, for example.

15 JUDGE DIPPELL: Okay. That's all the -- all the
16 questions I had. Is there any further cross-examination
17 based on questions from the Bench? From Staff?

18 MR. BERLIN: Yes, Judge.

19 CROSS-EXAMINATION

20 BY MR. BERLIN:

21 Q Mr. Abernathy, I -- I think it was a
22 Commissioner question, perhaps from Commissioner Jarrett.
23 And I believe it was about the McGee case. And --

24 A The what case?

25 Q The McGee case.

1 A McGee. Okay. Yes.

2 Q And in that case, you indicated that that was
3 about an individual going in and breaking the locks and
4 turning on gas?

5 A Right. To various apartments.

6 Q Are you aware of whether more than locks were
7 broken in that incident?

8 A Not that I'm aware of. They were just breaking
9 off the locks and turning the gas on and, I guess, looking
10 to find the one that actually went to their apartment.
11 There may have been something else broken, but I'm not
12 aware of it.

13 MR. BERLIN: Thank you.

14 JUDGE DIPPELL: Is there any further
15 cross-examination from Public Counsel?

16 MR. POSTON: Yes. Thank you. Just a few.

17 CROSS-EXAMINATION

18 BY MR. POSTON:

19 Q In response to a question from Commissioner
20 Jarrett, you said that a tariff can't limit your liability
21 for gross negligence; is that right?

22 A That's my understanding of the law.

23 Q And that a court of law would understand that
24 and they wouldn't apply the tariff in that situation?

25 A I believe that would be true.

1 Q Would a typical customer understand that, that
2 gross negligence can't be limited when they looked at your
3 tariff?

4 A No. But their attorney would.

5 Q Or if they didn't have an attorney, would they
6 understand it?

7 A But we wouldn't be there if we didn't have a
8 lawsuit filed in the first place.

9 Q You're saying customers wouldn't look at your
10 tariff unless they file a lawsuit?

11 A I'm saying I believe that we have to have a
12 lawsuit filed, and then the tariff, at that point, would
13 take effect potentially.

14 Q But do you agree, though, that a typical
15 customer would not understand that?

16 A I --

17 MR. ZUCKER: Objection. What he -- I don't see
18 how he could testify as to what a typical customer could
19 understand. Speculation.

20 JUDGE DIPPELL: Well --

21 MR. POSTON: That's fine.

22 A My answer was going to be I don't know what a
23 customer would understand. I understand it, and I'm a
24 typical customer, maybe.

25 Q (By Mr. Poston) Okay. I'll -- I'll move on.

1 And you -- in response to a question from Judge Dippell,
2 you talked about telephone -- I think water and telephone
3 services. And do -- do those pose the same dangers as gas
4 service?

5 A They were not given as examples for danger, but
6 just merely just examples of where liability exoneration
7 was given.

8 Q That's not my question. Do those -- do those
9 services pose the same dangers as natural gas service?

10 A I don't believe so. But, then again, I don't
11 know particularly. I don't believe so, no.

12 MR. POSTON: That's all I have. Thank you.

13 JUDGE DIPPELL: Thank you. Is there a redirect
14 from Laclede?

15 MR. ZUCKER: Yes, your Honor. Would you prefer
16 I do it from the --

17 JUDGE DIPPELL: Whichever you prefer.

18 MR. ZUCKER: I think I'll stay here if that's
19 okay.

20 REDIRECT EXAMINATION

21 BY MR. ZUCKER:

22 Q Good morning again, Mr. Abernathy.

23 A Good morning.

24 Q You -- you had a question about whether there
25 were any jury verdicts in the cases that you cite in your

1 direct testimony. And you said that there were not, that
2 the cases had been settled. Do you recall that?

3 A Yes.

4 Q And when you settled those cases, why did you
5 settle them for the amounts you -- you settled them for?

6 A Well, we did not want to take the risk of going
7 in front of a court and a jury, particularly with
8 plaintiffs who were injured, and run the risk of having
9 even higher amounts and charging Laclede's ratepayers more
10 than what a settlement amount would be.

11 Q So there isn't any limit on what a jury might
12 do?

13 A Correct. We do know when we're discussing
14 things with a plaintiff, they make demands. And demands
15 can be any number they want. So you have a general idea
16 where they're going with their case and what they want,
17 and so you try to settle if you can for significantly less
18 dollars if possible.

19 Q Okay. Well, let me ask you about that. Have
20 you -- have you seen any theories having to do with the
21 pressure that -- that gas came into a consumer's house?

22 A In one of the cases, one of the ten cases
23 alleged to with Judge Dippell, we had that alleged in one
24 of those cases.

25 Q And is pressure, gas pressure, covered by the

1 Missouri and Federal pipeline safety rules?

2 A Yes.

3 Q So would this theory have diverged from -- from
4 those rules?

5 A I'm not sure I understand what you're asking me.

6 Q Would the theory by the -- by the plaintiff in
7 that case have diverged from the rules in force under the
8 pipeline safety rule?

9 A Yeah. Plaintiff was alleging that we somehow
10 violated those rules. I mean, the plaintiff just states
11 too high. They don't really tell us what too high, in
12 their opinion, means.

13 Q Well, are they saying you violated the rules, or
14 are they saying that you violated what -- what they
15 believe the standard should be?

16 A Both.

17 Q Have you ever had cases in which the -- the
18 plaintiff said that they didn't get an adequate warning?

19 A Yes.

20 Q Okay. And were those allegations made within
21 the confines of the safety rules requirements regarding
22 warnings?

23 A Yes.

24 Q All right. What about odorizing gas? Have
25 there been any complaints in which the plaintiff had a

1 theory about the odorization of gas?

2 A I think there have been some. But I don't think
3 any of them were relevant to our tariff issue here today,
4 though.

5 Q Okay. So there -- there was or was not an issue
6 of what the plaintiff was theorizing on the odorization of
7 gas that differed from what the rules required?

8 A No. We have not had that happen.

9 Q Okay. Would it -- would a plaintiff be free to
10 do that at this time in the absence of this tariff?

11 A Yes. And, as a matter of fact, going back to
12 your question, I think, frankly, one of the -- in the
13 McGee case, that allegation was made by odorization, also,
14 but we did testing to disprove that our odorization was
15 within the standards and was fine.

16 Q Okay.

17 A So --

18 Q So we said they were within standards?

19 A Yes.

20 Q The plaintiffs was free to say that they didn't
21 meet a standard that the plaintiff thought was correct or
22 proper; is that right?

23 A Right. But once we demonstrated that the
24 standards were met and the odor was there, that issue kind
25 of fell by the way-side.

1 Q You were asked a question by Judge Dippell, I
2 believe, about whether the -- the -- the tariff would
3 allow you to settle the case at a better price. Or a
4 better cost.

5 A Right.

6 Q Do you recall that?

7 A Yes.

8 Q Would -- would the tariff not provide you that
9 leverage?

10 A Yes, it would.

11 Q And once the tariff became known to the legal
12 community, could that result in lawsuits not being filed
13 once facts were determined that -- that didn't meet the
14 tariff's requirements?

15 A Yes.

16 Q So you could avoid the lawsuit entirely?

17 A Yes.

18 Q And -- and in that case, would you save,
19 basically, all of the money of the -- otherwise of the
20 cost of the lawsuit?

21 A That's right.

22 Q In your direct testimony -- do you have that in
23 front of you?

24 A I do. I do.

25 Q You were asked some questions about page -- on

1 page 3. You cite, starting on line 13, A case in which
2 the company was sued for in a carbon monoxide poison case
3 for allegedly failing to properly inspect a customer-owned
4 furnace, even though the incident occurred approximately
5 one year and four months after the mandated turn-on
6 inspection.

7 A Yes.

8 Q And would the tariff apply to determine that
9 Laclede was not at fault in that case?

10 A Yes.

11 Q And so it is possible, then, that a plaintiff
12 under these facts would simply not sue Laclede?

13 A Possible.

14 Q You were asked a question about what safety
15 standards were set by judges and juries. Have there been
16 any theories in any of your cases regarding the locks on
17 meters?

18 A Yes. The McGee case.

19 Q Okay. And what was the plaintiff's theory in
20 that case?

21 A Well, one theory -- he's really -- he's got
22 several theories. But the one theory that, really, he's
23 got left that's out there at all is that the company
24 should have put some kind of additional security or
25 different types of locks or something to prevent the locks

1 from being broken off in the first place. But that's our
2 negligence, in his opinion.

3 Q And should you take that to trial and a jury
4 agree with -- with the plaintiff there, what -- what --
5 what would Laclede then do?

6 A Well, we'd obviously have some discussions on
7 the issue. But I think an obvious response would be to
8 figure out what additional security we'd need on those
9 meters and possibly go out and put additional, better
10 security devices on all the meters.

11 Q And would there be cost to that?

12 A Certainly.

13 Q And when you settle these cases, do you avoid
14 having a standard like that set?

15 A Yes.

16 Q In the -- in the proposed tariff language
17 attached to your surrebuttal, you were asked questions
18 about language in -- on page 2, toward the top, which
19 discusses that -- or which states that the -- the customer
20 shall indemnify, hold harmless and defend the company from
21 any liability having to do with certain events that would
22 occur on customer equipment. Why is the indemnify, hold
23 harmless and defend language in there?

24 A Well, again, this is more legal machinations.
25 But, in essence, what it does is prevent the lawsuit in

1 the first place. That's the concept. If a person's got
2 to indemnify themselves, then they don't file a suit.

3 Q Okay. So it stops the law -- stops the lawsuit?

4 A It stops the lawsuit. Again, it's a cost saver.

5 Q You were asked about the dangers of electricity
6 and water compared to the danger of gas. Do you recall
7 that?

8 A I believe it was phone and water.

9 Q Oh, phone and water. Okay. Phone and water or
10 phone and electricity?

11 A I think it was phone and water.

12 Q Phone and water. Okay. And I assume that you
13 wouldn't have a problem admitting that people drown in
14 water?

15 MR. POSTON: Objection. Leading.

16 Q (By Mr. Zucker) Do people drown in water?

17 A Yes.

18 MR. ZUCKER: Okay. Permission to approach the
19 witness.

20 JUDGE DIPPELL: Go ahead.

21 Q (By Mr. Zucker) Okay. Have you had -- I don't
22 have copies of these to hand out, but this is in response
23 to Judge Dippell's questions about the -- your surrebuttal
24 testimony in which you referred to tariffs of Southwestern
25 Bell and Aquila. Are these the tariffs that you're

1 referring to?

2 A Yes.

3 Q And can you read Aquila's paragraph 3.01?

4 A It's titled Interruptions of Gas Service. "The
5 company shall not be responsible for any failure or
6 interruption of gas service unless such failure or
7 interruption is due to the willful and wanton misconduct
8 of the company."

9 Q Okay. And can you also read 3.03?

10 A Yes. That's titled Indemnity -- excuse me.
11 Indemnity to Company. "The customer shall indemnify, save
12 harmless and defend company against all claims, damages,
13 costs or expenses for loss, damage or injury to persons or
14 property in any manner directly or indirectly connected
15 with or growing out of the distribution and use of gas by
16 the customer at or on the customer's side of the point of
17 delivery."

18 Q And this is Aquila's tariff?

19 A Yes.

20 Q Is this the Missouri tariff?

21 A Yes.

22 Q And can you tell us the sheet number?

23 A It's Sheet R-21. It was effective on May 1st of
24 2004.

25 Q Okay. And can you read South -- do you have in

1 front of you Southwestern Bell's Missouri tariff?

2 A I do.

3 Q And can you read paragraph 17.8.3?

4 A I can. It's called Interruptions of Service.

5 "The customer assumes all risk for damages arising out of
6 mistakes, omissions, interruptions, delays, errors or
7 defects in transmission, failures or defects in equipment
8 and facilities furnished by a phone company occurring in
9 the course of furnishing service, in the telephone service
10 or the communications services furnished" -- excuse me --
11 "furnished him by the telephone company, or of the
12 telephone company failing to maintain proper standards of
13 maintenance and operation and to exercise reasonable
14 supervision, except as follows: If service is interrupted
15 other than by negligence or willful act of the customer,
16 in allowance if the rate for that portion of the
17 customer's service affected by the interruption shall be
18 made for the time such interruption continues after the
19 fact as reported by the customer where after detected by
20 the telephone company and the interruption is for more
21 than 24 hours.

22 No other liability shall in any case attach to
23 the company in consideration of such interruptions. The
24 telephone company will not be responsible for any loss or
25 damage nor for any impairment or failure of the service

1 arising from or in connection with the use of
2 customer-owned facilities or equipment and not caused
3 solely by the negligence of the telephone company."

4 That is No. 35, it looks like, of the Missouri
5 tariff. It was effective April 30th of 1997.

6 Q And that was plenty long. Thank you,
7 Mr. Abernathy.

8 A Okay. Did I read it okay?

9 Q Yes. You read great.

10 A All right.

11 Q Commissioner Jarrett asked you some questions
12 about Laclede being exculpated from gross negligence. Let
13 me ask you, in general, is the purpose of this tariff --
14 paragraph to relieve Laclede from liable for gross -- for
15 this proposed tariff to relieve Laclede from liability for
16 gross negligence?

17 A No.

18 Q Is it the purpose of this tariff to relieve
19 Laclede from liability from simple negligence?

20 A No.

21 Q Okay. And Commissioner Jarrett also asked you
22 about whether the safety rules meant, in all cases, that
23 the company was -- if you complied with the safety rules,
24 you were completely protected. Do you recall those
25 questions?

1 A I do.

2 Q Okay. And let's -- if you would with me, go
3 through what the compliance with the safety rules actually
4 covers. On -- on the first page of the proposed tariff,
5 schedule DPA-1, the first paragraph, the first paragraph
6 start -- the first paragraph that's on line -- starts on
7 line 16 has to do the with the safe transmission and
8 distribution of gas; is that correct?

9 A Yes.

10 Q And compliance with Federal and Missouri
11 pipeline safety rules would or would not guarantee that
12 Laclede would -- would not be liable in a case having to
13 do with the safe transmission and distribution of gas?

14 A If we met those rules, it would provide, it
15 says, a complete defense.

16 Q Okay. So, for example, is the -- is the -- an
17 allegation that Laclede provided a -- if Laclede provided
18 some kind of pressure that was within the rules, would --
19 would this -- this tariff would apply to that?

20 A Yes.

21 Q Look on page -- the bottom of page 2 with the
22 paragraph that starts on line 36.

23 A Okay. I'm there.

24 Q This paragraph is about providing warnings or
25 safety information to customers; is that correct?

1 A Yes.

2 Q Would compliance with those Federal and Missouri
3 pipeline safety rules protect Laclede from claims of --
4 from a claim that they failed to provide warning or safety
5 information?

6 A Yes.

7 Q Would Laclede also have to have no actual
8 knowledge of -- of a condition on the -- on the customer's
9 premises?

10 A Correct. We'd have to not have that knowledge.

11 Q Okay. If Laclede did not comply with the
12 Commission's safety rules on -- on warnings and providing
13 safety information, would Laclede then be exposed to
14 liability, civil liability?

15 A Yes. We would be exposed to potential civil
16 liability.

17 Q Would Laclede also be exposed to potential
18 penalties for failure to comply with those rules?

19 A Yes.

20 Q And is -- it's the same -- are your answers the
21 same with regard to the safe transmission and distribution
22 of gas we talked about earlier?

23 A Yes.

24 Q And if -- if a plaintiff came up with a theory
25 that we should have provided a warning not covered by the

1 safety rules, would the tariff apply?

2 A Yes.

3 Q Would you turn to page 3 for me of the proposed
4 tariff, line 24?

5 A Okay. I'm there.

6 Q Does that paragraph have to do with the odor --
7 odorization of gas?

8 A Yes, it does.

9 Q And does compliance with Federal and Missouri
10 pipeline safety rules protect the company from claims
11 regarding the odorization of gas?

12 A Yes.

13 Q And so if -- if the company -- but if the
14 company did not comply with those rules, would the company
15 still be protected?

16 A No.

17 Q Would the company be exposed to civil liability?

18 A Yes. Potential civil liability.

19 Q Would the company be exposed to potential
20 penalties?

21 A Yes.

22 Q And -- and if the tariff were in place, would it
23 protect Laclede from a plaintiff who wanted to establish a
24 theory of negligence based on odorization that was not in
25 the Commission rules?

1 A Yes. Again, it's all potential protection
2 because courts can also ignore this if they so deem, I
3 believe.

4 Q Okay. So we've gone over the safe transmission
5 and distribution of gas, the obligation to provide
6 warnings or safety information and the odorization of gas,
7 correct?

8 A (Witness nods head.)

9 Q And those are the items in which compliance with
10 the rules provides Laclede protection from liability?

11 A Yes. Theoretically.

12 Q Okay. Now, let's turn to page 2, the paragraph
13 that begins on line 5 and goes all the way down to line
14 34.

15 A All right. I'm there.

16 Q Compliant -- there's no mention of compliance
17 with safety rules in those two paragraphs, is there?

18 A No, there is not.

19 Q So compliance with safety rules would not be a
20 -- a defense in a case in which there was, let's say, CO
21 poisoning?

22 A Correct.

23 Q What about if there was a gas leak and an
24 explosion? Would compliance with safety rules protect us
25 in all cases?

1 A Not in those paragraphs, no.

2 Q And -- and let's go over exactly what these
3 paragraphs apply to, these two paragraphs on page 2.
4 Could you read 1 through 4 for me starting on line 11?

5 A Okay. It's the release or leakage of gas on the
6 customer side of the point of delivery, a leak and
7 ignition of gas from customer equipment, any failure of or
8 defective and proper or unsafe condition of any customer
9 equipment. And 4 is a release of carbon monoxide from
10 customer equipment.

11 Q And those are the instances that are covered by
12 those two paragraphs; is that correct?

13 A Yes.

14 Q Mr. Abernathy, when Laclede does a home sale
15 inspection, does it often do, at some point, a -- a --
16 around that same time a turn-on inspection?

17 A Quite often, yes.

18 Q And the home sale inspection is generally
19 considered to be not regulated; is that correct?

20 A Yes. We've had this conversation. Again, it
21 depends on your term of regulated.

22 Q The revenues from the home sale inspection are
23 included in rates; is that correct?

24 A Yes.

25 Q Otherwise, that service is not regulated?

1 A Yes.

2 Q Okay. And the turn-on inspection, by contract
3 -- by contrast is completely regulated?

4 MR. POSTON: Your Honor, I'll object to this
5 line of questioning. These are all leading questions.

6 JUDGE DIPPELL: Sustained.

7 Q (By Mr. Zucker) Okay. Is the turn-on
8 inspection completely regulated?

9 A Turn-on is set by standards that are set by
10 Commission. Yes.

11 Q Okay. And so if the tariff was to cover
12 regulated services, in this case, it would also cover the
13 less than fully regulated service; is --

14 MR. POSTON: Objection.

15 Q (By Mr. Zucker) Let me ask again.

16 A The intent is to cover both scenarios.

17 MR. ZUCKER: Let her sustain the objection, and
18 then I'll ask it again.

19 JUDGE DIPPELL: Yeah. Sustained. And I'll ask
20 you to rephrase your question. You are leading the
21 witness.

22 MR. ZUCKER: It's easier that way, Judge.

23 JUDGE DIPPELL: It is. And as long as
24 Mr. Poston wasn't objecting, I was letting you go on.

25 MR. ZUCKER: Fair enough. Thank you, your

1 Honor.

2 Q (By Mr. Zucker) Would the tariff in that case
3 cover both the fully regulated service and the partially
4 regulated service?

5 A Yes. It's intended to do both.

6 Q And -- and in the -- in the cases that you
7 cited, these -- some of these liability cases in which
8 Laclede performed both the home sale inspection and
9 turn-on inspection, did it make a difference as to whether
10 the tariff covered one and not the other?

11 A No. I don't believe so. I'm not sure what
12 you're asking me, but I don't believe so. Were you --

13 Q If the tariff had only covered regulated
14 services, would -- could the lawsuit have been filed
15 anyway? Would we still have been in court?

16 A Yes. It's obviously difficult when you're in
17 the house for two different visits to distinguish an
18 allegation of negligence is being made as to which visit,
19 if any visit, created this allegation.

20 MR. ZUCKER: That was -- that was helpful.
21 Thank you, Mr. Abernathy. That's all the questions I
22 have, your Honor.

23 JUDGE DIPPELL: Thank you. I believe, then,
24 that that's all that we have for Mr. Abernathy. So you
25 may be excused.

1 And this will be a good time for us to take a
2 break. Let's take a break, not quite 15 minutes, come
3 back at five after 11. Thank you. We can go off the
4 record.

5 (Break in proceedings.)

6 JUDGE DIPPELL: Let's go ahead and go back on
7 the record. All right. Then we're ready to begin with
8 Staff's witness. Would you like to begin, Mr. Berlin?

9 MR. BERLIN: Yes. Thank you, your Honor.
10 Staff's first witness is Natelle Dietrich.

11 JUDGE DIPPELL: And in the interim there,
12 Mr. Berlin premarked his exhibits in numerical order. And
13 as we go through, he will make sure we know that we're all
14 on the same page with those numbers.

15 Ms. Dietrich, would you please raise your right
16 hand?

17 NATELLE DIETRICH,
18 being first duly sworn to testify the truth, the whole
19 truth, and nothing but the truth, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BERLIN:

22 JUDGE DIPPELL: Thank you. Go ahead,
23 Mr. Berlin.

24 MR. BERLIN: Thank you, Judge. And I presume I
25 don't have to go to the podium?

1 JUDGE DIPPELL: You're fine.

2 MR. BERLIN: Okay. Thank you.

3 Q (By Mr. Berlin) Ms. Dietrich, for the record,
4 would you please state your full name?

5 A Natelle, N-a-t-e-l-l-e, Dietrich,
6 D-i-e-t-r-i-c-h.

7 Q And what is your position with the Missouri
8 Public Service Commission?

9 A I am the Director of Utility Operations.

10 Q And in this case, did you cause to be prepared
11 surrebuttal testimony in a question and answer format?

12 A Yes, I did.

13 Q And that surrebuttal testimony premarked Exhibit
14 4 as filed on September 29th?

15 A I don't know if it's Exhibit 4 or not.

16 Q Okay. Yes. It's premarked as Exhibit 4.

17 JUDGE DIPPELL: It is Exhibit 4.

18 A Okay. Yes, I did.

19 Q (By Mr. Berlin) And do you have any corrections
20 to your testimony?

21 A No, I do not.

22 Q And if you were asked today the same questions
23 in your surrebuttal testimony, would the answers to your
24 questions be the same, to the best of your knowledge,
25 information and belief?

1 A Yes, they would.

2 MR. BERLIN: Okay. Your Honor, I tender the
3 witness for cross-examination.

4 JUDGE DIPPELL: All right. Would you like to go
5 ahead and offer that testimony at this point?

6 MR. BERLIN: Oh, yes, Judge. I would like to
7 offer the surrebuttal testimony of Natelle Dietrich
8 premarked as Exhibit 4 into evidence.

9 JUDGE DIPPELL: Would there be any objection to
10 the surrebuttal testimony, Exhibit No. 4?

11 MR. ZUCKER: No objection, your Honor.

12 JUDGE DIPPELL: Then I will receive it into the
13 record.

14 (Exhibit No. 4 was offered and admitted into
15 evidence.)

16 MR. BERLIN: Thank you, your Honor. And tender
17 the witness for cross-examination.

18 JUDGE DIPPELL: All right. Is there any
19 cross-examination by Laclede?

20 MR. ZUCKER: No, your Honor.

21 JUDGE DIPPELL: Is there cross-examination by
22 Public Counsel?

23 MR. POSTON: Yes.

24 MS. DIETRICH: Thank you.

25 CROSS-EXAMINATION

1 BY MR. POSTON:

2 Q Good morning.

3 A Good morning.

4 Q I've waited a long time for this. I'm just
5 kidding. I just have a few questions. If you could,
6 please turn to page 3 of your surrebuttal.

7 JUDGE DIPPELL: Mr. Poston, I will need you to
8 speak into your mic. a little bit.

9 MR. POSTON: Okay.

10 JUDGE DIPPELL: Thank you.

11 Q (By Mr. Poston) Are you there?

12 A Yes.

13 Q Okay. And down at the bottom, you cite to a
14 tariff from Empire District Electric Company. Do you see
15 that?

16 A Yes, I do.

17 Q Would you agree that the -- this tariff only
18 applies to interruptions or curtailment of the customer's
19 load as far as what liability is limited?

20 A Yes. I would -- the excerpt that is there.

21 Q And if you could please turn to page 4? And at
22 the top of the page, you cite a -- a tariff provision from
23 Kansas City Power & Light Company; is that correct?

24 A That's correct.

25 Q Would you agree that under this tariff, KCPL is

1 still liable for willful misconduct or gross negligence?

2 And look specifically at line 10. It says except where --

3 A And could you repeat your question?

4 Q Would you agree that under this tariff, at least
5 under that paragraph, KCPL is still liable for willful
6 misconduct and gross negligence?

7 A To the extent that the language says except
8 where due to the company's willful misconduct or gross
9 negligence, the company shall not be considered in default
10 of its service agreement and shall not be liable, so on
11 and so forth.

12 Q Okay. And are you aware of any similar language
13 in the tariff proposal that's before the Commission today?

14 A No.

15 Q And on page 5, you have another tariff cite, and
16 that's for American Water Company; is that correct?

17 A That's correct.

18 Q And if you look down at the very bottom of that
19 where you've got paragraph D, Company Liability, and at
20 the very end of that, would you agree that they would not
21 limit the company's liability where injury or damages have
22 been caused by negligence of the company or its employees?

23 A That is correct.

24 Q And can you show me where in Laclede's tariff a
25 similar limitation applies?

1 A That type of language is not in Laclede's
2 tariff.

3 Q And on page 6, at the bottom, you cite to a
4 liability tariff for Ameren IP, Illinois Gas in Illinois;
5 is that correct?

6 A Yes.

7 Q And isn't it true that under that cite -- or the
8 paragraph that you quoted here that the company would
9 still be liable if it was negligent? And I'm specifically
10 looking at lines 27 and 33.

11 MR. BERLIN: Judge, I'd like to object. And I
12 -- I'm objecting to -- to the question if it's intended to
13 get a legal conclusion from her. I don't know if that's
14 the line of Mr. Poston's questioning or not.

15 MR. POSTON: Well, she quotes these provisions
16 in her testimony. And I'm just asking her questions about
17 what she says, you know, her opinion of how they would
18 apply.

19 She's certainly put these out there as
20 representing something, and I'm questioning her about
21 that. I'm not asking her for a legal interpretation.

22 JUDGE DIPPELL: And I will -- I will sustain the
23 objection as far as it's to a legal conclusion. But if
24 your question is what is her understanding of the tariff,
25 then she has presented these tariffs as -- in her

1 testimony as knowing something about them. So I will
2 allow to you ask her those -- those types of questions.

3 MR. POSTON: Okay.

4 A Well, I mean, all -- all the language that's in
5 my tariff that we've been discussing so far is just to the
6 extent that I'm reading the language in there, not making
7 a legal opinion. But -- so could you repeat the question?

8 Q (By Mr. Poston) Well, on that tariff, the
9 Illinois Gas tariff, does it appear to you that -- that
10 they would not -- would still be liable if they were
11 negligent? And I'll leave it there.

12 A And you cited two lines?

13 Q Yes. Line 27 and line 33.

14 A Those -- that language seems to imply that the
15 company would be liable for negligence.

16 Q And is a similar provision in the proposal
17 that's before the Commission today that sets out that the
18 company would still be liable if they were negligent?

19 A That --

20 MR. ZUCKER: I'm going to object to the extent
21 that that calls for a legal conclusion. I guess he can
22 ask what language is in today's proposal, but not what
23 the --

24 JUDGE DIPPELL: I'll sustain that.

25 Q (By Mr. Poston) Is there language in Laclede's

1 proposal that, your understanding, states that the company
2 would still be liable for negligence?

3 A There is not explicit language similar to what
4 you're pointing out.

5 MR. POSTON: Can I approach the witness, please?

6 JUDGE DIPPELL: Yes. You can show whatever that
7 is to her attorney first.

8 MR. POSTON: I'm going to hand her a copy of
9 Commission Rule 4 CSR 240-40.017, HVAC Services Affiliate
10 Transaction Rules, and I have copies for everybody. I
11 don't intend to make this an exhibit, but just -- do you
12 want enough for everybody up there?

13 JUDGE DIPPELL: Yes, please. Thank you.

14 Q (By Mr. Poston) And I'll ask you to turn to --
15 well, first, would you agree that this appears to be what
16 you're looking at is a copy of the Commission's HVAC
17 Service Affiliate Transaction Rules?

18 A At -- excuse me. At least as of March 31st,
19 2008.

20 Q Okay. Are you aware if those have changed since
21 then?

22 A Not that I'm aware of.

23 Q Okay. And if you will look at 4 CSR 240-40.017,
24 subsection 5, and it's on the bottom of the second page on
25 the left side. And you'll see underlined some language

1 for you. And if you could, please just look over that for
2 me.

3 A Okay.

4 Q All right. And I'm not asking you to make a
5 legal interpretation of these rules. But would you agree
6 that this rule says that a regulated gas corporation may
7 not engage in HVAC services in a manner which subsidizes
8 the activities of such regulated gas corporation?

9 A All right. I would agree that that's what the
10 underlined portions of that particular section say.

11 Q And would you agree that this also says that a
12 regulated gas corporation may not change the rates or
13 charges for the regulated gas corporation services above
14 or below the rates or charges that would be in effect if
15 the regulated gas corporation were not engaged in such
16 activities?

17 A I -- I would agree that that's what that
18 particular section says, especially with the language
19 that's underlined.

20 MR. POSTON: That's all I have. Thank you.

21 JUDGE DIPPELL: Thank you. Are there any
22 questions from the Bench for Ms. Dietrich? Commissioner
23 Jarrett?

24 COMMISSIONER JARRETT: No questions.

25 JUDGE DIPPELL: Commissioner Kenney?

1 COMMISSIONER KENNEY: No questions. Thank you.

2 MS. DIETRICH: Thank you.

3 JUDGE DIPPELL: Okay. I think I had just a
4 couple.

5 CROSS-EXAMINATION

6 BY JUDGE DIPPELL:

7 Q I'm on page 4 of your surrebuttal of Exhibit 4
8 where you cite that Kansas City Power & Light tariff and
9 the continuity of service. Do you know -- if a customer
10 wants basic service from Kansas City Power & Light, they
11 want to turn on their electric to their home, for example,
12 is this the provision of the tariff that governs that
13 service?

14 A I'm not sure.

15 Q Okay.

16 A I -- I do have copies of the entire pages of
17 each of the excerpts that are quoted in my testimony, if
18 that helps.

19 Q Okay. Well, I'm going to get to that after --

20 A Okay.

21 Q -- after you testify. And then in -- on page 6,
22 you cite to some Minnesota tariff and an Illinois tariff,
23 I believe.

24 A Yes.

25 Q Do you -- just do you know -- I assume you're

1 somewhat familiar with other states' operations and their
2 Public Service Commissions; is that --

3 A To a certain extent.

4 Q Do you know if the State of Minnesota or
5 Illinois has the same powers and jurisdiction as Missouri
6 -- as Missouri's Commission?

7 A Not as far as like safety rules and that type of
8 thing. Mr. Leonberger may be able to address that. Some
9 of the other stuff, I don't know that it would apply.

10 JUDGE DIPPELL: Okay. That's all the questions
11 I had. Commissioner Davis, did you have any questions for
12 Ms. Dietrich?

13 COMMISSIONER DAVIS: No questions. Thank you,
14 Ms. Deitrich.

15 MS. DIETRICH: Thank you.

16 JUDGE DIPPELL: Thank you. Were there any
17 further cross-examination questions based on my questions
18 from Laclede?

19 MR. ZUCKER: I might have just one, your Honor.

20 CROSS-EXAMINATION

21 BY MR. ZUCKER:

22 Q In -- in contrast to those tariffs you read, do
23 -- don't -- doesn't Laclede's proposed tariff affirmative
24 -- affirmatively set forth our responsibilities? In other
25 words, instead of saying due to negligence, it says

1 instead, due to a failure to comply with rules?

2 MR. POSTON: Objection. Objection. Leading.

3 MR. ZUCKER: I can lead this witness.

4 MR. POSTON: Oh, sorry.

5 JUDGE DIPPELL: Overruled.

6 MR. POSTON: It just doesn't seem like cross to
7 me. But okay.

8 JUDGE DIPPELL: Go ahead.

9 Q (By Mr. Zucker) Do you want me to repeat the
10 question?

11 A No. That's okay. The questions I was asked
12 were specific as to language that appeared in the tariff.
13 And that specific language did not seem to appear to me in
14 the Laclede tariff. Although, like you said, it's almost
15 worded from the other direction where as long as these
16 things are met, then the liabilities or the
17 responsibilities ends.

18 MR. ZUCKER: Okay. Thank you.

19 JUDGE DIPPELL: Is there any further
20 cross-examination for Public Counsel?

21 MR. POSTON: No, thank you.

22 JUDGE DIPPELL: Is there redirect from staff?

23 MR. BERLIN: Yes, your Honor.

24 REDIRECT EXAMINATION

25 BY MR. BERLIN:

1 Q Ms. Dietrich, Mr. Poston handed out to you a
2 copy of Commission Rule 240-40.017 titled the HVAC
3 Services Affiliate Transactions. That would be the rule
4 that applies. Do you have that copy?

5 A Yes, I do.

6 Q Okay. And I -- he asked you certain questions
7 about this rule. And I will -- I would direct you to
8 Section 8. And I will give you time to read that section.

9 A Okay.

10 Q Now, does that rule apply to Laclede?

11 A Yes, it does.

12 Q And doesn't it grant Laclede an exemption to
13 perform -- or it -- it allows the Commission to grant an
14 exemption to the Commission to perform HVAC-related
15 services?

16 MR. POSTON: I'll object to this as leading.

17 JUDGE DIPPELL: Sustained.

18 Q (By Mr. Berlin) I'll rephrase that, Ms.
19 Dietrich. Is it -- do you understand this rule to provide
20 the authority of the Commission as to grant an exemption
21 to Laclede to perform HVAC services?

22 A Yes, I do.

23 Q And are you familiar with Case No. GE-2000-610?
24 That would be Schedule 1-1 of Mr. Imhoff's surrebuttal
25 testimony.

1 A I'm not familiar with everything in the case,
2 but I have read the order and the attachment as it appears
3 to Mr. Imhoff's testimony.

4 Q You have -- and would you agree with me that
5 Schedule 1-1 is an order granting exemption in case
6 GE-2000-610?

7 A That's correct.

8 Q And would you agree that this order of the
9 Commission grants Laclede an exemption --

10 MR. POSTON: objection.

11 Q (By Mr. Berlin) -- to this rule?

12 MR. POSTON: Objection. Leading.

13 JUDGE DIPPELL: Sustained.

14 Q (By Mr. Berlin) Ms. Dietrich, with regard to
15 this particular order, would you please read the ordered
16 paragraph 1?

17 A "It is therefore ordered, one, that Laclede Gas
18 Company is granted an exemption pursuant to Section
19 386.756(7), Cumulative Supplement 1998 and 4 CSR 24-40.017
20 (8)."

21 Q All right. Thank you. And I believe, Ms.
22 Dietrich, you -- in response to, I believe it was Judge
23 Dippell's question, you indicated that you have copies of
24 the tariffs that you have referenced or addressed directly
25 in your surrebuttal testimony?

1 A Not the entire tariffs, but the pages where the
2 different excerpts came from.

3 MR. BERLIN: And, Judge, as a matter of
4 convenience to the Commission, I'd like to be able to pass
5 those copies out.

6 JUDGE DIPPELL: That would be fine. I was going
7 to ask, since we've been talking a lot about tariffs, the
8 company's tariffs, I believe most of the witnesses cite
9 certain tariffs on file here at the Commission.

10 Would there be any objection to the Commission
11 taking official notice of any of the tariffs that are on
12 file here at the Commission?

13 MR. ZUCKER: That would be fine with us.

14 MR. POSTON: No objection.

15 JUDGE DIPPELL: Okay.

16 MR. BERLIN: No objection. Your Honor, I might
17 add, if I might, if -- a motion to -- for the Commission
18 to take administrative notice of its orders in Case
19 GE-2000-610.

20 JUDGE DIPPELL: I was to about to get to that
21 one, too. Thank you, Mr. Berlin. Would there be any
22 objection to taking administrative notice of that -- of
23 those orders in that case?

24 MR. ZUCKER: No, your Honor.

25 MR. POSTON: No objection.

1 JUDGE DIPPELL: All right. Thank you. And,
2 Mr. Berlin, if you -- if you do happen to have copies of
3 those particular tariff pages, it probably would be good
4 to go ahead and give those. But you can save that for
5 when we're in a break or something. Thank you.

6 MR. BERLIN: All right. All right. Thank you,
7 your Honor. I have no further questions of Ms. Dietrich.

8 JUDGE DIPPELL: All right. I believe that's all
9 for you, then, Ms. Dietrich. You may be excused.

10 MS. DIETRICH: Thank you.

11 JUDGE DIPPELL: You can go ahead with your next
12 witness, then, Mr. Berlin.

13 MR. BERLIN: Your Honor, Staff calls our next
14 witness, Robert Leonberger.

15 ROBERT LEONBERGER,
16 being first duly sworn to testify the truth, the whole
17 truth, and nothing but the truth, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BERLIN:

20 JUDGE DIPPELL: Thank you.

21 Q (By Mr. Berlin) Good morning, Mr. Leonberger.

22 A Good morning.

23 Q For the record, please state your full name.

24 A Robert R. Leonberger.

25 Q And how are you employed by the Commission?

1 A I'm employed in the Commission's Utility
2 Operations Division. I -- I'm Assistant Manager and head
3 up the Gas Safety Program.

4 Q And how long have you been employed in that
5 particular position?

6 A I've been employed in that position for
7 approximately 18 years. I've been with the Commission for
8 approximately 27 years.

9 Q All right. And, Mr. Leonberger, in this case,
10 did you cause to be prepared rebuttal and surrebuttal
11 testimony, Exhibit Nos. 5 and 6 respectively, in a
12 question and answer format?

13 A I'm not sure of the exhibit numbers, but I -- I
14 did provide rebuttal and surrebuttal testimony.

15 Q Okay. And do you have any corrections to your
16 rebuttal testimony at this time?

17 A No.

18 Q Do you have any corrections to your surrebuttal
19 testimony at this time?

20 A No.

21 Q And, Mr. Leonberger, if you were asked the same
22 questions in your rebuttal and your surrebuttal testimony
23 at this date, would your questions be the same to your
24 best information, knowledge and belief?

25 A Yes, they would.

1 JUDGE DIPPELL: I believe you meant to ask if
2 his answers would be the same, Mr. Berlin.

3 MR. BERLIN: Oh, I apologize, your Honor. Let
4 me rephrase that.

5 Q (By Mr. Berlin) And your answers to the
6 questions posed in your rebuttal and surrebuttal testimony
7 would be the same to your best information, knowledge and
8 belief?

9 A Yes.

10 MR. BERLIN: Okay. Your Honor, I would move to
11 admit into evidence Mr. Leonberger's rebuttal testimony,
12 which we marked Exhibit 5, and Mr. Leonberger's
13 surrebuttal testimony, which we marked as Exhibit No. 6.

14 JUDGE DIPPELL: Thank you. Would there be any
15 objections to Exhibit 5 and 6?

16 MR. ZUCKER: No.

17 MR. POSTON: No.

18 JUDGE DIPPELL: Seeing no objection, I'll
19 receive those into evidence.

20 (Exhibit Nos. 5 and 6 were offered and admitted
21 into evidence.)

22 JUDGE DIPPELL: Is there any cross-examination
23 by Laclede?

24 MR. ZUCKER: No, your Honor.

25 JUDGE DIPPELL: Public Counsel?

1 MR. POSTON: Yes. Thank you.

2 CROSS-EXAMINATION

3 BY MR. POSTON:

4 Q Mr. Leonberger, in your testimony, you talk
5 about the company's obligation to perform an inspection
6 whenever gas is turned on; is that correct?

7 A Yes.

8 Q And would -- can you please describe the
9 services provided by Laclede where Laclede would need to
10 turn on the gas -- or turn off and turn on the gas?

11 A There being a number of -- number of instances
12 where the gas is -- whenever the gas is -- is off, then
13 whenever the company come to turn the gas back on,
14 reinstate service or use service or turn on after a
15 disconnection, any time the gas is physically turned on,
16 the rules in -- in 240-40.03(10)(J) or (12)(S) would
17 apply.

18 Q And if Laclede replaced a water heater, would
19 there need to be a turn off and turn on?

20 A There could be. There may be or there may not
21 be.

22 Q Can you please explain? When and what instances
23 would there be, and what instances would there not be?

24 A I'm not really -- I haven't watched Laclede put
25 a water heater in. But they could, conceivably, turn a

1 valve off on a pipe going to the water heater and
2 disconnect service to that appliance and then replace the
3 water heater and -- and turn the valve back on to that
4 appliance without disconnecting the gas, I mean, without
5 turning the gas off at the meter.

6 Q So in that case, would there be a required
7 inspection?

8 A Of --

9 Q The turn-on inspection that you talk about in
10 your -- in your testimony.

11 A According to the -- 12-S?

12 Q According to any of the rules. If they're
13 replacing a, say, water heater where they're not turning
14 it off at the meter and they're just turning it off at the
15 valve, I guess, inside the premise, does that require an
16 inspection?

17 A Not according to the rules. No.

18 Q You're familiar with the Commission's safety
19 rules, gas safety rules?

20 A Yes.

21 Q And would you agree that -- that the
22 Commission's gas safety rules are specifically -- the
23 purpose of those is specific in the rule, and it states
24 that they are minimum standards, minimum safety standards?

25 A The -- the rule states they're minimum safety

1 standards. I would say that they're not -- I -- I would
2 say they're -- that they're -- the rules are more
3 stringent in the Federal rule. They're not minimum
4 standards. They're minimal standards by which the company
5 has to abide by.

6 Q Okay. And my question was are they minimum. I
7 didn't say minimal.

8 A I understand that. But I think that they're --
9 they're the minimum standards the company must adhere to.

10 Q And are you familiar with the -- the Federal
11 safety rules --

12 A Yes.

13 Q -- 49 CFR Part 192?

14 A Yes.

15 MR. POSTON: May I approach the witness?

16 JUDGE DIPPELL: Yes.

17 MR. POSTON: And I would like to have this
18 marked as an exhibit. It's --

19 JUDGE DIPPELL: All right. I let Mr. Berlin
20 mark his witness testimony. Mr. Berlin, how far did we
21 get?

22 MR. POSTON: We're at 7.

23 MR. BERLIN: I believe we went all the way down
24 to 9 for all of Staff's witnesses.

25 JUDGE DIPPELL: Okay. So this would be Exhibit

1 No. 10.

2 MR. POSTON: Okay. I have enough for the
3 parties. I can give you mine when I'm done and just give
4 you that right now.

5 JUDGE DIPPELL: Just give us four.

6 MR. POSTON: All right.

7 Q (By Mr. Poston) Okay. Mr. Leonberger, I've
8 just handed you what's been marked as Exhibit 10. And
9 would you agree that this exhibit includes certain pages
10 of 49 CFR, Section 192, certain pages from -- from that
11 Federal Regulation?

12 A Yes. I don't know if it's the most current one
13 or not, but --

14 Q And looking at each page, I've underlined
15 certain provisions. And would you agree that this appears
16 to show the scope for each subpart of 49 CFR 192?

17 A The underlying portions in this? Is that what
18 you're talking about?

19 Q Yes. If you'll just flip through this, the
20 scope of each subpart. Is that what this exhibit appears
21 to be is just showing the scope of this rule down to each
22 subpart?

23 A What was your question again?

24 Q Would you agree that this exhibit shows the
25 scope for each subpart of 49 CFR 192, subparts A through

1 M?

2 A Yes. And -- yes.

3 Q And would you agree that each -- the scope of
4 each subpart is specifically stated that it is a minimum
5 requirement?

6 A Yes.

7 MR. POSTON: Your Honor, I'll offer Exhibit 10.

8 JUDGE DIPPELL: Would there be any objection to
9 Exhibit 10, which is parts of 49 CFR, Chapter -- or
10 Section 192?

11 MR. ZUCKER: No, your Honor.

12 MS. SHEMWELL: No.

13 JUDGE DIPPELL: Seeing --

14 MR. BERLIN: No.

15 JUDGE DIPPELL: Seeing no objection, I will
16 receive that.

17 (Exhibit No. 10 was offered and admitted into
18 evidence.)

19 MR. POSTON: Thank you. That's all the
20 questions I have.

21 JUDGE DIPPELL: Are there any questions from the
22 Commission? Commissioner Davis?

23 COMMISSIONER DAVIS: No questions.

24 JUDGE DIPPELL: Commissioner Jarrett?

25 COMMISSIONER JARRETT: No questions. Thanks,

1 Mr. Leonberger.

2 JUDGE DIPPELL: Commissioner Kenney?

3 COMMISSIONER KENNEY: No, thank you.

4 JUDGE DIPPELL: Well, that just leaves me. I
5 seem to be the one with questions today.

6 CROSS-EXAMINATION

7 BY JUDGE DIPPELL:

8 Q Mr. Leonberger, in -- at page 4 of your rebuttal
9 testimony, on line 3, you -- you start out with, Staff
10 believes the tariff language does not limit. When -- when
11 you say Staff in that instance, can you tell me exactly
12 who you mean? Do you mean yourself or Staff as a whole
13 or --

14 A I guess in my testimony, I was talking about
15 myself. But in our working with the other staff members
16 and working through this testimony working through this
17 case, I think there's a consensus among the staff members
18 that we work with.

19 Q And then in your surrebuttal testimony, you talk
20 about Missouri having more stringent regulations than
21 other states. Or, actually, you say the -- the safety
22 rules are not part of the Federal pipeline safety
23 regulations and are additional more stringent safety
24 requirements placed on the gas utilities. Missouri is one
25 of few states that require the additional safety

1 inspection. Do you know how many other states require
2 those kind of safety inspections?

3 A There's not -- I don't know the number now.
4 There's very few that require the company to go inside and
5 do an inspection during the turn-on.

6 Q Do you know that there are other states that
7 require that?

8 A I'm not aware of any states that require that.
9 I've asked a number of times, and no one else has said
10 they have those kind of regulations.

11 Q On page 9, you mentioned --

12 A I'm sorry. I don't have my rebuttal testimony.
13 I have surrebuttal in front of me. I don't have rebuttal.
14 I'm sorry.

15 Q I'm sorry.

16 JUDGE DIPPELL: Thank you, Mr. Berlin.

17 Q (By Judge Dippell) Up at the very top, you
18 said, "This gives customers additional safety protection
19 when Laclede performs unregulated work whose revenues go
20 toward rate-making."

21 I just have a basic question. Do you know if
22 Laclede ever performs -- and I probably should have asked
23 Mr. Abernathy this question. But do you know if Laclede
24 ever performs work outside of its regulated service
25 territory if it does HVAC work?

1 A You mean if -- I'm not sure I understand the
2 question. If -- if Laclede performs work on -- on an
3 Ameren customer, for instance? Is that what you're
4 saying?

5 Q Yes.

6 A I don't know.

7 Q You don't know?

8 A No.

9 JUDGE DIPPELL: Sorry. Apparently, I had
10 questions for Mr. Abernathy I didn't ask.

11 MR. ZUCKER: Your Honor, we would volunteer that
12 we do not do work outside of our service territory.

13 MR. POSTON: Judge, I -- I object to --

14 JUDGE DIPPELL: That's all right.

15 MR. POSTON: -- Mr. Zucker testifying.

16 JUDGE DIPPELL: Yeah. I will strike that
17 from --

18 MR. ZUCKER: If you -- if you like, you can
19 re-swear in Mr. Abernathy.

20 JUDGE DIPPELL: It's not important.

21 MR. ZUCKER: Just trying to help.

22 JUDGE DIPPELL: But I -- I will not -- and the
23 Commission will not consider any testimony from the
24 attorneys who are not sworn witnesses.

25 All right. That's all the questions I had

1 Mr. Leonberger. Were there any other further
2 cross-examination questions based on my questions from
3 Laclede?

4 MR. ZUCKER: Yes, your Honor.

5 CROSS-EXAMINATION

6 BY MR. ZUCKER:

7 Q Mr. Leonberger, you were asked by Judge Dippell
8 some questions about Missouri's rules and that they were
9 more stringent than the Federal rules. Do you recall
10 that?

11 A Yes.

12 Q Is it your understanding that the Federal safety
13 rules apply to interstate pipelines?

14 A They apply to interstate and intrastate
15 pipelines, yes.

16 Q Okay. And is it your opinion that the Federal
17 safety rules provide -- fully provide safe and adequate
18 service?

19 A I would have to answer that the -- the
20 Commission's rules have to be as stringent as the Federal
21 rules. And the State of Missouri -- the Commission has
22 added a number of requirements in the rules above and
23 beyond the Federal rules.

24 So I guess my answer would have to be the
25 Commission and -- the Commission rules are more stringent.

1 So we added rules to those minimum rules, minimum
2 standards.

3 Q So are you testifying that -- that the Federal
4 -- that the -- the Federal Government will not let the
5 states provide less than the minimum safety standards that
6 they have promulgated?

7 A As a provision, the grant we get from the
8 Department of Transportation, we have to have rules and
9 regulations that are at least as stringent as the Federal
10 Pipeline Safety Regulations. We are allowed to have
11 regulations that are more stringent. And in many cases,
12 the Commission rules are more stringent.

13 Q So minimum, then, means the states have to do
14 this at a minimum, but they can do more?

15 MR. POSTON: Objection. Leading. I'm sorry.
16 Sorry.

17 Q (By Mr. Zucker) Is that correct?

18 A I -- I believe that this -- well, yes. The
19 Federal standards are there and that the Commission's
20 rules go beyond that in a number of areas.

21 Q So do you believe the Missouri safety rules
22 provide safe and adequate service?

23 A Yes.

24 Q And if there was a -- if there were -- if there
25 was a rule that you thought was necessary to provide safe

1 and adequate service and it wasn't in the rules, would you
2 propose that that rule be passed?

3 A Yes.

4 MR. ZUCKER: That's all I have. Thank you.

5 JUDGE DIPPELL: Is there additional
6 cross-examination from Public Counsel?

7 MR. POSTON: Yes. Thank you.

8 CROSS-EXAMINATION

9 BY MR. POSTON:

10 Q In response to a question from the Judge, you
11 stated that you weren't aware of any other states that had
12 similar more stringent safety requirements; is that
13 correct?

14 A In -- in -- in relation to going inside --
15 inside of a structure and having to do a inspection of a
16 piping appliances during a turn-on.

17 Q And how many states did you contact?

18 A Over the years, we have an organization -- I
19 probably asked the question. I haven't contacted by
20 letter. But in the course of different meetings when
21 we're there, I've asked those people if any of them have
22 that kind of rule, and I have not gotten an affirmative
23 response from any states.

24 Q And are all states represented in that
25 organization?

1 A Except for Alaska, I believe.

2 Q And were all states present at the time you
3 posed those questions?

4 A Probably over the last 15 to 20 years, I -- I
5 would imagine most of them were. I don't know if all of
6 them were.

7 Q You believe you've posed that question to all
8 states but Alaska?

9 A I'd say the vast majority of the states. I
10 didn't say all of them. No.

11 MR. POSTON: Okay. Thank you. That's all.

12 JUDGE DIPPELL: Thank you. Is there redirect
13 from Staff?

14 MR. BERLIN: Yes, your Honor.

15 REDIRECT EXAMINATION

16 BY MR. BERLIN:

17 Q Mr. Leonberger, Mr. Poston had asked you some
18 questions regarding turn-on inspections. Do you recall
19 those questions?

20 A Yes.

21 Q And he had asked questions related to a water
22 heater replacement. Do you recall that question?

23 A Yes.

24 Q And correct me if my understanding isn't your
25 understanding. Does the water -- can a water heater

1 replacement involve shutting off gas to the residence?

2 A I -- under certain circumstances, it could, yes.

3 Q All right. And when that is done, that would
4 qualify as a -- that the turning on of service would
5 require a turn-on inspection; is that correct?

6 A If -- if Laclede is there, they're -- any time
7 the gas is physically turned on, there's supposed to be
8 the inspections under 12 -- 240-50.03(12)(J).

9 Q Okay. Now, does Laclede, when it's working on
10 the water heater, have any safety obligations or duties
11 placed upon it by the Commission?

12 A Yes.

13 Q And what would that be?

14 A In the rule I just quoted before, 12-J, there's
15 a section under 12 -- I'm sorry -- 12-S(3), The operator
16 shall discontinue service to any customers whose fuel
17 lines or gas utilization equipment are determined to be
18 unsafe.

19 So it would be my reading of that rule that if
20 the operator is there, Laclede being the operator, to do
21 other work that they would be bound by that particular
22 section of the rule.

23 Q Okay. Mr. Leonberger, Mr. Poston had asked you
24 some questions regarding, I think, the -- the 12-J and --
25 or 12-S and 10-J rule.

1 MR. BERLIN: Judge, I would like to, for the
2 convenience of the Commission and the parties present,
3 pass out a copy of this particular segment of the rule,
4 what we have been talking about, the 10-J and the 12-S
5 rule.

6 JUDGE DIPPELL: All right.

7 MR. BERLIN: May I?

8 JUDGE DIPPELL: Yes.

9 Q (By Mr. Berlin) And, Mr. Leonberger, do you
10 have a copy in front of you of the 10-J and the 12-S
11 rules?

12 A Yes.

13 Q And it was your testimony that these rules are
14 more stringent than the Federal rules?

15 A That's correct. In fact, we've been asked by
16 the attorney for the DOT how we were able to be able to do
17 that.

18 Q Okay. Well, I'd like to direct your attention
19 to -- bear with me as I calibrate my -- my eyes on these
20 rules.

21 Okay. If you -- if you would go, please, to
22 10-J and Section B where it starts off, A visual
23 inspection of the exposed accessible gas, customer gas
24 piping. Are you there?

25 A Yes.

1 Q Okay. Now, if you go further on down in that, B
2 Section of 10-J, you'll -- you'll see that the inspection
3 is to determine that the requirements of any applicable
4 industry codes, standards or procedures adopted by the
5 operator to assure safe service are met.

6 And does -- so -- the applicable industry codes
7 are codes -- are they the codes that relate to the items
8 being inspected at the time?

9 A Those -- the code that would be referred to
10 would be -- term the codes that have been operated on
11 would be like the National Fire Protection Association
12 code or the building -- building code that applies to
13 inside piping -- inside fuel piping.

14 Q And so when that visual inspection is made, it
15 is made under the purview or guidance, also, of those
16 rules?

17 A Yes.

18 Q The applicable industry code?

19 A Yes. The standard would be to apply those rules
20 to what they see. Yes.

21 Q Okay. And does the Federal rules require that?

22 A No.

23 Q Okay. Is it your understanding, Mr. Leonberger,
24 when the Laclede operator or the service rep. is on site
25 that if he sees an unsafe condition, he has a duty to

1 respond to that?

2 A My reading of the Section 12 (S)(3), the
3 operator in this case shall discontinue -- the operator
4 shall discontinue service to any customer whose fuel line
5 gas utilization equipment are determined to be unsafe.
6 They're in there. If Laclede is the operator and they're
7 there as Laclede, then I believe that they would be held
8 to the standard of -- of discontinuing the service to the
9 fuel line or the utilization equipment.

10 Q So it's not just a matter of them doing a
11 particular repair to, say, a water heater. But they are
12 also held to the standard that if they see something here
13 that is unsafe --

14 A If they were determined to see -- determine
15 something is unsafe while they're in there, I believe that
16 would apply. Yes.

17 MR. BERLIN: Okay. Judge, I don't believe I
18 have any more questions. Thank you.

19 JUDGE DIPPELL: Thank you. I believe that's all
20 the questions for you, then, Mr. Leonberger. And you may
21 be excused. Go ahead with your next witness, Mr. Berlin.

22 MR. BERLIN: Yes, your Honor. The Staff calls
23 Staff witness Tom Imhoff.

24 THOMAS IMHOFF,
25 being first duly sworn to testify the truth, the whole

1 truth, and nothing but the truth, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. BERLIN:

4 JUDGE DIPPELL: Thank you.

5 Q (By Mr. Berlin) Good morning Mr. Imhoff.

6 A Good morning.

7 Q For the record, would you please state your full
8 name?

9 A My name is Thomas, T-h-o-m-a-s, M. Imhoff,
10 I-m-h-o-f-f.

11 Q Okay. And, Mr. Imhoff, how are you employed by
12 the Commission?

13 A I am employed as the Rate and Tariff Examination
14 Supervisor in the Energy Section for the Tariffs/Rate
15 Design.

16 Q And how long have you worked in that position?

17 A Eight or nine years, roughly.

18 Q And how long have you worked for the Commission?

19 A A long time. Not quite 28 years.

20 Q Okay. Mr. Imhoff, in the context of this case,
21 did you cause to be prepared rebuttal -- prepare the filed
22 testimony as surrebuttal, prefiled testimony in question
23 and answer format?

24 A Yes.

25 Q And do you have any questions -- or I'm sorry --

1 excuse me. Do you have any corrections to your rebuttal
2 testimony at this time?

3 A Yes, I do.

4 Q Okay.

5 A It would be page 3, line 7 where it currently
6 states the warranty period. It should have read the
7 non-incident operation period.

8 Q Okay. Do you have any more corrections to your
9 rebuttal testimony?

10 A Not that I'm aware of.

11 Q Okay. Do you have any corrections to make to
12 your surrebuttal testimony?

13 A No.

14 Q And with noting the correction you just made to
15 your rebuttal testimony, would the answers you have given
16 to the questions in your rebuttal and surrebuttal
17 testimony, if you gave them today, be the same as are in
18 your testimony based upon your best information, knowledge
19 and belief?

20 A Yes.

21 MR. BERLIN: Your Honor, I would move to admit
22 into evidence Mr. Imhoff's rebuttal testimony premarked as
23 Exhibit 7 and Mr. Imhoff's surrebuttal testimony premarked
24 as Exhibit 8.

25 JUDGE DIPPELL: Would there be any objection to

1 Exhibits 7 and 8?

2 MR. ZUCKER: No, your Honor.

3 JUDGE DIPPELL: Seeing none, then, I will
4 receive that into evidence.

5 (Exhibit Nos. 7 and 8 were marked for
6 identification.)

7 MR. BERLIN: Your Honor, the Staff tenders
8 Mr. Imhoff for cross-examination.

9 JUDGE DIPPELL: Thank you. Is there
10 cross-examination by Laclede?

11 MR. ZUCKER: No, your Honor.

12 JUDGE DIPPELL: Public Counsel?

13 MR. POSTON: Yes. Thank you.

14 CROSS-EXAMINATION

15 MR. POSTON:

16 Q Good afternoon, Mr. Imhoff.

17 A Good afternoon, Mr. Poston.

18 Q If you could please turn to page 3 of your
19 rebuttal.

20 A Okay. I'm there.

21 Q I can't find the -- the line that -- where this
22 is. But I believe you say on here that revenues for HVAC
23 and home inspections go toward lowering customer costs of
24 gas service; is that correct?

25 MR. BERLIN: Mr. Poston, could you point us to a

1 line on that?

2 MR. POSTON: It may be surrebuttal. Let me
3 look. Okay. I'm having a hard time finding it. I would
4 just like to --

5 Q (By Mr. Poston) Okay. Let me just ask you that
6 question. Do you believe that revenues for HVAC and home
7 inspections go toward lowering customer's cost of gas
8 service -- customers' cost of gas? Cost of service.
9 Sorry.

10 A Okay. I was going to say, not the cost of gas.

11 Q Yeah. Sorry. I don't know why I wrote that in
12 there. Sorry.

13 A That has nothing to do with that. I believe
14 that the -- that the -- since the revenues are -- are
15 included in the cost of service, they would help to lower
16 the -- the overall margin.

17 Q Okay. And would you also agree that the
18 liability for HVAC home inspections would go towards
19 increasing the cost of service?

20 A If there are costs, yes.

21 Q And could you please turn to your schedule in
22 the back of your surrebuttal testimony?

23 A Okay.

24 Q And there's a list on here that has a list of
25 services. Is it -- is it your understanding that these

1 are unregulated services?

2 A It is my understanding that these services are
3 not tariff -- tariffed by the Commission. However, they
4 are included in the rate-making process.

5 Q They're considered during the rate-making
6 process?

7 A Yes.

8 Q And on your surrebuttal, page 3 -- let just ask
9 this: It's your belief that nothing in this tariff is
10 intended to limit Laclede's liability for its own
11 negligence; is that correct?

12 A Yes.

13 Q Would you still support this tariff if Laclede's
14 liability was limited for its own negligence as an
15 unintended result?

16 MR. BERLIN: Objection, your Honor. I think
17 that's asking the witness to speculate.

18 MR. POSTON: I don't believe I'm asking him to
19 speculate on anything. I'm just asking if -- if the rule
20 is applied differently than how he believe it's applied,
21 what would be his position?

22 MR. BERLIN: Judge, I don't even think I
23 understand the question. So --

24 JUDGE DIPPELL: Would you repeat your question,
25 Mr. Poston?

1 MR. POSTON: I said, would you still support
2 this tariff if Laclede's liability was limited for its own
3 negligence as an unintended result? Basically, he has
4 stated that nothing -- this tariff does not limit
5 Laclede's negligence -- liability for negligence. And I'm
6 saying, if it did, would he still support it?

7 JUDGE DIPPELL: I'll -- I'll allow that. He's
8 asking for his opinion.

9 A Could you repeat the question? I'm sorry. All
10 the bantering back and forth.

11 Q (By Mr. Poston) If this tariff was actually
12 interpreted by the Commission or a Court order did
13 determine that it did limit Laclede's liability, would you
14 still support this tariff if Laclede's liability for
15 negligence was limited?

16 A If the company was in violation of any of the
17 Commission rules, statutes, regulations of the Commission,
18 then I would -- I would not support anything that would be
19 in violation of any rules or regulations of the
20 Commission. That's the way I view it. So --

21 Q Okay. Would you be in support of anything that
22 allowed Laclede to be negligent and not be liable?

23 MR. ZUCKER: I'm going to object, your Honor. I
24 think we -- he's asking him for a legal conclusion
25 because, I guess, the question is whose version of

1 negligence are we -- are we looking at?

2 MR. POSTON: I'm asking for his. He has
3 testified that he doesn't think this tariff would make
4 Laclede liable if they were negligent. Or he's saying it
5 would not protect them if they were negligent. And I'm
6 saying if it would, what's your position? And I don't
7 think the answer he gave me before was actually answering
8 that question.

9 JUDGE DIPPELL: I think maybe that's the
10 problem. I don't think the witness quite understands the
11 question that you're asking. I will allow you to ask what
12 his opinion is about -- I will allow you to pose that
13 hypothetical, in other words.

14 I won't allow him to -- I won't allow you to ask
15 questions requiring a legal opinion, but I will allow you
16 to ask his opinion.

17 Q (By Mr. Poston) Okay. Let me just rephrase it.
18 I've found the line. If you looked on page 3 of your
19 surrebuttal, line 11, it states, "Nothing in the tariff is
20 intended to limit Laclede's liability for its own
21 negligence."

22 I'm just asking, would your position supporting
23 this tariff change if there was something in the tariff
24 that limited Laclede's liability for negligence?

25 A Yes.

1 Q Yes, you would still support the tariff?

2 A No. No. Not for negligence.

3 Q And down at the bottom of page 3, you state
4 that, "Laclede's tariff time limits are in line with
5 warranty time periods for HVAC contractors." Do you see
6 that?

7 A Yes.

8 Q Are you aware of anything preventing Laclede
9 from including the same warranty in its HVAC service
10 agreements?

11 A Would you mind repeating the question again?
12 I'm sorry.

13 Q Are you aware of anything preventing Laclede
14 from including the same warranty in its HVAC service
15 agreements?

16 A I'm not aware of any.

17 Q In your review for this case, did you see any
18 HVAC contract agreements where the contractor's liability
19 for injuries and damages was limited as proposed here?

20 MR. ZUCKER: I'm going to object to that as
21 calling for a legal conclusion again.

22 JUDGE DIPPELL: I'll sustain that one.

23 MR. POSTON: Okay. That's all I have. I don't
24 know how to rephrase that one. Thank you.

25 JUDGE DIPPELL: Okay. Are there any Commission

1 questions for Mr. Imhoff? From Commissioner Davis? I'll
2 take that as a no. Commissioner Kenney?

3 COMMISSIONER KENNEY: No, thank you.

4 JUDGE DIPPELL: Okay. I just have a couple,
5 Mr. Imhoff.

6 MR. IMHOFF: Okay.

7 CROSS-EXAMINATION

8 BY JUDGE DIPPELL:

9 Q On page 3 of your rebuttal, at line 6 --

10 A Okay. Let me get there. Okay.

11 Q You say that information provided Staff the
12 ability to analyze various unregulated providers'
13 warranties of similar services. Can you tell me which --
14 which services you're referring to there?

15 A It would be HVAC type services.

16 Q So all of the kind of services that we've been
17 talking about today or -- well, I guess we've talked about
18 water heaters and that kind of thing. Just -- just
19 specifically HVAC. But does that include like the home
20 inspections? I --

21 A The only thing that I looked at was what -- what
22 the company provided me in a staff data request. And it
23 was basically different HVAC type of contracts or where
24 they had their number of days for the limited warranty.

25 Q In your surrebuttal testimony, you -- on page 22

1 at line 11, you say, "Laclede books its merchandising
2 costs, which are not included in the cost of service,
3 below the line." Can you just explain to me what
4 merchandising costs are?

5 A Merchandising costs, to my understanding, is --
6 is when Laclede would actually sell a water heater or a
7 stove or something Like that. Anything to do with the
8 actual selling of the product.

9 Q So it's sales force and advertising and that
10 kind of thing?

11 A That would be my understanding, that that is
12 booked separately.

13 Q Okay.

14 A But -- but Staff witness Kim Bolin may have a
15 better feel for that actual question.

16 Q Okay. On page 3 of your surrebuttal --
17 surrebuttal, you state down at line 20, "The non-incident
18 operational periods provide customers with a reasonable
19 time period upon which customers may bring a claim against
20 Laclede."

21 What -- what is it that you base your opinion
22 about what's reasonable on for these kind of time periods?

23 A Just from looking at the information that was
24 provided to me from the company, from the various HVAC
25 information that I was provided.

1 Q And then last one on page 5, you talk about the
2 Staff's proposal to have a -- a Sunset Provision on the
3 tariff. Down at 15, you say, "Staff recommends the tariff
4 end in three years."

5 I was a little confused about whether or not
6 Staff is recommending the second rate case or three years
7 or both?

8 A Either one would -- would suffice. It -- what
9 we had originally put in was based off of the company's
10 original filing that did not have any dates set to review
11 that.

12 So in my rebuttal testimony, I thought that by
13 looking at it from an experimental standpoint, we could --
14 three years from the effective date of -- of the tariff
15 itself would be an appropriate time frame. But --

16 Q Then --

17 A But then with this second rate case, they are
18 subject to the ISRIS (ph.) rules as well as the statutes.
19 So they are to file a rate case within three years of the
20 -- of an ISRIS filing. So we may be looking at three to
21 four years, somewhere in there if we look at the company's
22 second rate case aspect because I know that their time
23 limit is coming up shortly for having to file a rate case
24 due to the ISRIS statute.

25 Q So Staff would be comfortable with either a

1 three-year Sunset or the second year -- or second rate
2 case provision like Laclede --

3 A That is correct.

4 Q -- proposed?

5 JUDGE DIPPELL: Okay. Okay. Thank you. Is
6 there additional cross-examination based on my questions
7 from Laclede?

8 MR. ZUCKER: Just -- just one, I think, your
9 Honor.

10 CROSS-EXAMINATION

11 BY MR. ZUCKER:

12 Q In terms of the -- you were asked some questions
13 by Judge Dippell about the length of the time the tariff
14 would be in effect. In -- in terms of immediate results,
15 the tariff would not create immediate results. Would you
16 agree with that?

17 A Yes, I would.

18 Q Probably take some time for events to occur
19 before we -- Laclede actually realized savings that could
20 be passed on to customers?

21 A I would agree with that.

22 MR. ZUCKER: Thank you.

23 JUDGE DIPPELL: Public Counsel?

24 MR. POSTON: No questions. Thank you.

25 JUDGE DIPPELL: Staff, is there any redirect?

1 MR. BERLIN: Yes, your Honor.

2 REDIRECT EXAMINATION

3 BY MR. BERLIN:

4 Q Mr. Imhoff, do you recall some questions that
5 Mr. Poston asked you regarding services? And I believe he
6 directed you to Schedule 1-3, the list --

7 A Yes.

8 Q -- of HVAC services.

9 A Yes.

10 Q And -- and at the top of the list, you see a
11 section on Laclede sells the following appliances from gas
12 water heaters to gas space heaters, gas logs, gas ranges
13 and other types of gas appliances?

14 A Yes.

15 Q Okay. Is that part of the merchandising sales
16 operations, the selling of those appliances?

17 A Yes.

18 Q And the revenues from merchandising sales
19 operations, are those revenues booked below the line or
20 above the line?

21 A They would be booked below the line.

22 Q And so revenues that are booked below the line
23 would not go to rate-making purposes?

24 A That is correct.

25 MR. BERLIN: Judge, I have no further questions.

1 JUDGE DIPPELL: Thank you. I believe that's all
2 for you, then, Mr. Imhoff. And you may be excused.

3 MR. BERLIN: Judge, the Staff calls Kim Bolin,
4 Staff witness.

5 MR. BERLIN: Good morning, Ms. Bolin.

6 JUDGE DIPPELL: Can you please raise your right
7 hand?

8 KIMBERLY BOLIN,
9 being first duly sworn to testify the truth, the whole
10 truth, and nothing but the truth, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BERLIN:

13 JUDGE DIPPELL: Thank you. Go ahead,
14 Mr. Berlin.

15 MR. BERLIN: Thank you, Judge.

16 Q (By Mr. Berlin) Good morning, Ms. Bolin.

17 A Good morning.

18 Q For the record, would you please state your full
19 name for --

20 A Kimberly K. Bolin.

21 Q And how are you employed by the Commission?

22 A I am a Utility Regulatory Auditor.

23 Q And how long have you been in that position?

24 A Approximately four years.

25 Q And how long have you been employed by the

1 Commission?

2 A Well, approximately four years with the
3 Commission, but three years as an auditor. Excuse me.

4 Q Okay.

5 A I'm sorry.

6 Q And before that, were you employed by the Office
7 of Public Counsel?

8 A Yes, I was.

9 Q And for how long -- how long were you employed
10 by the Public Counsel's office?

11 A For almost 11 years.

12 Q Okay. All right. Ms. Bolin, in the context of
13 this tariff case, did you cause to be prepared surrebuttal
14 testimony in a question and answer format?

15 A Yes, I did.

16 Q And do you have any corrections to your
17 surrebuttal testimony premarked -- that is premarked as
18 Exhibit 9?

19 A No, I did not.

20 Q And, Ms. Bolin, if you were asked the same
21 questions today as were asked in your surrebuttal
22 testimony, would your answers be the same to your best
23 information, knowledge and belief?

24 A Yes, they would.

25 MR. BERLIN: Judge, the Staff tenders Ms. Bolin

1 for cross -- oh, excuse me. It's been a long day. Staff
2 moves for admission of Ms. Bolin's surrebuttal testimony
3 premarked as Exhibit 9.

4 JUDGE DIPPELL: Would there be any objection to
5 Exhibit No. 9?

6 MR. ZUCKER: No objection.

7 JUDGE DIPPELL: Seeing none, then I will admit
8 that.

9 (Exhibit No. 9 was offered and admitted into
10 evidence.)

11 MR. BERLIN: Thank you, your Honor. And the
12 Staff tenders Ms. Bolin for cross-examination.

13 JUDGE DIPPELL: Thank you. Is there any
14 cross-examination by Laclede?

15 MR. ZUCKER: No, there is not, your Honor.

16 JUDGE DIPPELL: Public Counsel?

17 MR. POSTON: Yes. Thank you.

18 CROSS-EXAMINATION

19 BY MR. POSTON:

20 Q Good afternoon, Ms. Bolin.

21 A Good afternoon.

22 Q In your position with the Commission, you review
23 company cost of service in rate cases; is that correct?

24 A That's correct.

25 Q And -- and when you do your review during the

1 rate -- have you done a review for Laclede?

2 A I was involved in the last Laclede rate case.

3 Q And would you agree that the data you reviewed
4 in that case and in other rate cases, that you reviewed
5 data that includes costs that are both above the line and
6 below the line; is that correct?

7 A Yes. Review both.

8 Q And would you please just briefly describe that
9 process and how you allocate those costs?

10 A We -- we review the general ledger is one step.
11 And that includes costs that are booked above the line and
12 below the line. We also review the company's cost
13 allocation manual that breaks out costs allocated between
14 non-regulated and regulated services. We review invoices
15 and other items.

16 Q And then after you've done that review, then you
17 determine what should be included in the cost of service;
18 is that correct?

19 A That is correct.

20 Q Okay. But you consider everything above the
21 line and below the line in your review?

22 A Yes, we do.

23 MR. POSTON: Thank you. That's all I have.

24 JUDGE DIPPELL: Thank you. Commissioner Kenney,
25 did you have any questions for Ms. Bolin?

1 COMMISSIONER KENNEY: I do not. Thank you.

2 JUDGE DIPPELL: Okay. I just have two little
3 ones. Maybe just one, actually.

4 CROSS-EXAMINATION

5 BY JUDGE DIPPELL:

6 Q On page 4 of your surrebuttal, line 10, you said
7 in the last Laclede Gas Company rate case, Staff included
8 in its cost of service the actual claim payments made
9 during the test year for injury and damages expense.

10 Do you, by any chance, know how much that was,
11 or would that be --

12 JUDGE DIPPELL: Before you answer that, would
13 that be somehow a confidential number? I believe
14 Laclede's last rate case was a settled case.

15 MS. SHEMWELL: Black box.

16 A It was a black box settlement case. I'm not
17 sure that I have the number. But let me check real quick.

18 JUDGE DIPPELL: And I'm not sure if --

19 MR. ZUCKER: We don't have a problem with it.

20 Q (By Judge Dippell) Okay.

21 A I don't have the number with me. But I have
22 reviewed it.

23 Q Okay. Okay. That's fine. I just -- if you
24 knew what it was, I was just curious.

25 JUDGE DIPPELL: That's the only question I have.

1 Commissioner Davis, did you have any questions for
2 Ms. Bolin?

3 COMMISSIONER DAVIS: Good to see you, Ms. Bolin.

4 MS. BOLIN: Thank you.

5 JUDGE DIPPELL: All right. is there any further
6 cross-examination based on my cross-examination from
7 Laclede?

8 MR. ZUCKER: I'm thinking. Maybe I'll try one.

9 CROSS-EXAMINATION

10 BY MR. ZUCKER:

11 Q Judge Dippell asked you about injuries and
12 damages amounts. Do you recall that?

13 A Yes, I do.

14 Q And -- and so the -- the -- the costs of
15 injuries and damages along with other costs of service
16 work and the revenues from service work all go into rates;
17 is that correct?

18 A Service work? Could you define service work a
19 little bit more?

20 MR. ZUCKER: Wait. Mr. Poston is going to
21 object.

22 MR. POSTON: Judge, I'm going to object. I
23 think your question was pretty simple, whether she looked
24 at the number from the last rate case. And this seems to
25 be going beyond that.

1 JUDGE DIPPELL: How does that get to my
2 question?

3 MR. ZUCKER: Well, I'm looking -- your question
4 had to do with the amount of -- of costs in our rates.
5 And so this is really just an adjunct of that.

6 MR. POSTON: Still doesn't explain how.

7 MR. ZUCKER: Oh, well, what -- what I -- what I
8 was hoping to show is that, in effect, the profits that we
9 make from this non-regulated service work go into our
10 rates and -- and the customers get them. And so, you
11 know, any change in -- in injuries and damages amounts are
12 going to go to the benefit of the customers anyway.

13 JUDGE DIPPELL: I think that's clear in her
14 testimony. I -- my question was really just trying to
15 quantify that amount. She doesn't know what the quantity
16 is. So --

17 MR. ZUCKER: Okay. All right.

18 JUDGE DIPPELL: I'd say that your question is
19 beyond the scope of my question.

20 MR. ZUCKER: I will withdraw it, then. Thank
21 you.

22 JUDGE DIPPELL: Thank you. Is there any
23 redirect from Staff?

24 MR. BERLIN: No, your Honor.

25 JUDGE DIPPELL: Oh, I'm sorry. I didn't ask if

1 there was recross from Public Counsel.

2 MR. POSTON: No, thank you.

3 JUDGE DIPPELL: I'm sorry. And nothing further
4 from Staff?

5 MR. BERLIN: Correct.

6 JUDGE DIPPELL: All right. Thank you, Ms.
7 Bolin. You may be excused.

8 Okay. Now is the dilemma. Did you want to take
9 a very short break, like five minutes and then come back
10 with Ms. Meisenheimer and just push through, or do you
11 want to keep going until one and stop for a short lunch?

12 MR. ZUCKER: Is there Choice C, stop for a short
13 lunch now?

14 JUDGE DIPPELL: Okay. We can do that.

15 MR. ZUCKER: Thank you.

16 JUDGE DIPPELL: Come back at 1:30.

17 MR. ZUCKER: That's good.

18 JUDGE DIPPELL: All right. Let's go ahead and
19 go off the record.

20 (Break in proceedings.)

21 JUDGE DIPPELL: Okay. Let's go ahead and get
22 started again. We can go back on the record. Okay. We
23 are back on the record.

24 And because I didn't realize the cafe in the
25 building was closed, everyone had to go out in the pouring

1 rain. And Mr. Zucker asked if he could leave his jacket
2 off. So just for anyone who might be watching online,
3 he's not showing any kind of disrespect.

4 Okay, then. We're ready to begin with Ms.
5 Meisenheimer. It looks like she's sitting in the stand
6 ready to go. Will you please raise your right hand?

7 BARBARA MEISENHEIMER,
8 being first duly sworn to testify the truth, the whole
9 truth, and nothing but the truth, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. POSTON:

12 JUDGE DIPPELL: Thank you.

13 MR. POSTON: Thank you.

14 Q (By Mr. Poston) Will you please state your
15 name?

16 A My name is Barbara Meisenheimer.

17 Q And by whom are you employed and in what
18 capacity?

19 A I'm employed by the Missouri Office of the
20 Public Counsel. I'm a Chief Utility Economist.

21 Q Are you the same Barbara Meisenheimer that
22 caused to be prepared and filed rebuttal testimony and
23 surrebuttal testimony that has been marked as --

24 A 11 and 12.

25 Q -- I believe Exhibit 11 and 12?

1 A Yes.

2 Q Do you have any corrections to your testimony?

3 A No.

4 Q If I asked you the same questions that appear in
5 your testimony today, would your answers be the same?

6 A Yes.

7 MR. POSTON: Your Honor, I offer -- I'd like to
8 offer the testimony into the record and tender Ms.
9 Meisenheimer for cross-examination.

10 JUDGE DIPPELL: Would there be any objection to
11 Exhibit Nos. 11 and 12?

12 MR. BERLIN: No, your Honor.

13 MR. ZUCKER: No, your Honor.

14 JUDGE DIPPELL: Then I will receive those into
15 the record.

16 (Exhibit Nos. 11 and 12 were offered and
17 admitted into evidence.)

18 JUDGE DIPPELL: Is there cross-examination from
19 Staff?

20 MR. BERLIN: No questions, your Honor.

21 JUDGE DIPPELL: From Laclede?

22 MR. ZUCKER: Yes, your Honor.

23 CROSS-EXAMINATION

24 BY MR. ZUCKER:

25 Q Good morning -- or good afternoon, Ms.

1 Meisenheimer.

2 A Good afternoon.

3 Q Good to see you again.

4 A You, too.

5 Q Just to -- I read your qualifications just to
6 establish this. You don't have any special education in
7 -- in gas service, do you?

8 A You mean other than what I've learned working
9 for the Missouri Office of the Public Counsel on various
10 rate cases over the time since 1996 that I've worked here?
11 No, I don't have any additional experience except for the
12 limited exposure that I had in the Physics and limited
13 engineering classes that I took at the University of
14 Missouri.

15 Q Okay. But you you've never taken training in
16 gas equipment? You've never taken a training course in
17 gas service equipment, have you?

18 A Not -- not a full array of gas service. I mean,
19 I've spoken to the Staff safety group, gas safety group
20 about, you know, the way in which equipment works, read to
21 some extent. But I haven't had any specialized courses
22 that cover the array of gas service equipment, no.

23 Q Okay. And you -- you have not participated in
24 -- in investigating a -- a gas incident, have you?

25 A No. Not participated in an investigation. No.

1 Q You've never participated in a lawsuit related
2 to a gas incident. Would that be true?

3 A That would be true.

4 Q Okay. I'm going to give you a hypothetical.
5 Let's say a customer buys a house. And at the time of the
6 purchase, Laclede provides a home sale inspection. And
7 then later, when the sale of the house closes, Laclede
8 comes out and turns the gas on and provides a turn-on
9 inspection. Okay?

10 Two years later, a pipe on the customer's side
11 of the meter gives way and the home fills with gas. And
12 there's an ignition and the house is destroyed and people
13 are injured. Based on -- on your statement in your
14 rebuttal testimony on page 3, line 15, Laclede should pay
15 for this as an insurer; is that correct?

16 A Line 13 on page --

17 Q Line 15 -- I'm sorry. Line -- line 17 on page 3
18 of your rebuttal.

19 A Okay. The one that begins there. In -- in your
20 hypothetical, I -- I would have to say given just that
21 information, I don't know.

22 Q Okay. And what information would you need?

23 A Well --

24 Q Why -- why don't you know, I guess?

25 A Okay. You -- you didn't give me any specifics

1 related to information about the -- the piping that might
2 have been there, the condition of that piping. I -- I
3 can't say under the information that I have one way or
4 another.

5 Q Okay. But if Laclede is basically an insurer,
6 then what you said is whether or not fault can be
7 assigned, Laclede should take on the loss and insure
8 against it itself?

9 A Well, whether -- whether or not fault can be
10 assigned, I mean, you didn't talk to me about whether
11 fault could be assigned to anyone else specifically. I
12 think that there are just more things to consider.

13 Q Okay. Let's say fault -- there's no one else to
14 assign fault to, I guess, other than the homeowner.

15 A Well, there is someone else to assign it to.

16 Q Okay. So let's say the homeowner hung his coats
17 on that -- on that line and that contributed to it. Would
18 you say the homeowner should pay for it, then?

19 A Yeah. Potentially. This is -- this -- or not
20 or -- whether or not fault can be assigned, I -- I was
21 talking about Laclede, certainly. But it doesn't say
22 that, in all cases, the fault couldn't be assigned to
23 someone else. I'm not saying if fault can be assigned to
24 someone else, then Laclede should act as an insurer.

25 Q Okay. Let's say fault can't be assigned to

1 someone else. We don't know why that -- that particular
2 pipe leaked and -- and gas came out. Laclede should pay
3 for it?

4 A Potentially, I think that's something that a --
5 a court and potentially a jury decide.

6 Q Okay. So the jury should be able to decide?

7 A Yeah. I think so.

8 Q Okay. And so if the jury decides that Laclede
9 should pay for it, that would be fine with you?

10 A I -- I -- I don't know all the -- all the
11 elements that might be involved. But I think, yes, taking
12 it to the courts is -- for a court to decide is
13 appropriate.

14 Q Okay. So let's say the Court decides that --
15 that the damages there are worth \$5 million, Laclede
16 should pay that. And let's say that the customer had
17 medical insurance that pays for most of the customer's
18 medical bills. Should Laclede -- the payment Laclede
19 makes go to basically benefit the customer's medical
20 insurance company?

21 A No. I didn't say that.

22 Q Well, if the customer collects the 5 million,
23 the medical insurance company subrogates and gets their
24 money back --

25 A Well, I didn't -- I didn't -- I didn't respond

1 or comment on this issue of that -- that this is
2 \$5 million and there may be another source of
3 compensation.

4 Typically, insurance companies, if you have a
5 car accident and no fault -- no fault is assigned to any
6 particular party, they often split it among the insurance
7 companies as to who might be responsible --

8 Q Okay.

9 A -- or not responsible, but what contribution
10 each should make toward the amount needed to replace or
11 that's determined an appropriate settlement or an
12 appropriate --

13 Q Okay. So I'm just trying to -- to determine the
14 terms of -- of your -- your insurance theory. So I'm
15 asking questions to develop that. So if -- if the -- if
16 Laclede had to pay 5 million and the customer had
17 homeowners insurance, then the homeowners insurance
18 company would get some of the money back; is that right?

19 A Well, I didn't -- I -- I think that there is a
20 lot of elements to your hypothetical that are getting
21 built onto this description. And, I mean, I think -- at
22 this point, I don't know what amount is paid by what
23 different group of other insurers.

24 Q Okay. So you -- I'm gathering from that answer,
25 you think that they would all share the cost?

1 A I think there might be cases where it would be
2 reasonable to share the cost.

3 Q Other insurance? Okay. And that would be the
4 case even though the customer would have paid, you know,
5 maybe a thousand dollars to the homeowner to the home
6 insurance company and nothing to Laclede; is that right?

7 A Nothing to Laclede.

8 Q Right. They didn't -- they paid in Laclede's
9 rates, but they didn't pay any special premium for
10 insurance.

11 MR. POSTON: Your Honor, I'm going to object.
12 These questions are all asking her to speculate on
13 situations where the facts could be -- you know, it's a
14 very fact specific issue we're talking about here. And
15 he's asking her to speculate. And we don't know all the
16 facts and nuances that could change her answer.

17 MR. ZUCKER: I'm -- I'm not holding her to any
18 particular -- any facts that I haven't stated. So I --
19 the hypothetical stands on its own.

20 JUDGE DIPPELL: I -- I think he's just asking --
21 I'm going to overrule your objection. I think he's just
22 asking her opinion. If she doesn't know the answer, she
23 can just say she doesn't know.

24 A I've lost the question, if there is one out
25 there.

1 Q (By Mr. Zucker) So have I.

2 A Okay.

3 Q On -- on page 4 at line 8 of your rebuttal
4 testimony, you say, "The customer should not be assigned
5 liability for all risks, loss and damages without the
6 customer's express consent to assume that liability from
7 the company." Did I read that correctly?

8 A Yes.

9 Q But in -- in your insurance theory, the company
10 has to assume that liability without its express consent,
11 right?

12 A I didn't -- I didn't say that under every
13 circumstance in every case that Laclede should bear
14 responsibility for loss that occurs.

15 Q Well, I understand not in every circumstance or
16 every case. But in general.

17 A Well, I don't think that I can -- I don't think
18 that I can take that as far as in general.

19 Q Okay.

20 A In some cases, I can certainly say yes to that,
21 that that's what the testimony says.

22 Q Okay. Well, let me ask you this one. Man's in
23 his back yard. He's in his swimming pool, and he's
24 watching the TV that's plugged in near the swimming pool.
25 The TV falls in the pool, and the man is electrocuted in

1 his own pool. Who -- who pays for the cost of that? The
2 electric company or the water company?

3 A Well, I think in -- in that case, neither the
4 electric or the water company would probably pay for that.

5 Q Right. So -- so why is the gas company the only
6 one that gets to be the insurer and not the other
7 utilities?

8 A The -- the issue of how the damage was incurred
9 -- or of how -- where the -- what was the cause? I don't
10 think it's clearly either, you know, due to something
11 related to the electric itself. Also -- or water.

12 And the water company and the electric company
13 -- or at least, you know, the ones that I'm familiar with,
14 they're not providing unregulated services where they
15 would come in and provide you a guard to keep your
16 television set from falling in the pool and electrocuting
17 you.

18 The water company isn't providing you with a --
19 you know, a liner to keep things from falling into the
20 pool to protect you from electrocution.

21 Q Okay. Let's go back to the original
22 hypothetical. And in that case, the jury decides that
23 when -- when we hadn't been to the house for two years,
24 that was negligence on our part. The company should go to
25 a home every year and inspect the customer's piping in the

1 home.

2 The Commission rules say we're supposed to check
3 our own equipment once every three years. Do you think
4 it's appropriate for the jury to be able to make a
5 decision that the company should check customer equipment
6 every -- every year?

7 A I -- I think that that's a court and jury's
8 decision to make. Whether the -- whether it aligns
9 completely with the Commission rules, maybe -- or in cases
10 where it may ask for something more than the Commission
11 rules, there may be additional facts or reasons for it.

12 For example, if -- if it turned out that the --
13 the ground, for some reason, tended to corrode piping
14 faster, then maybe there would be a need for a company to
15 go in in that case and look more frequently.

16 Q Well, I think you've made up your own
17 hypothetical there. In mine, it was a piping in the
18 customer's home.

19 A Oh, inside the home?

20 Q Right.

21 A Can you ask me the original question again,
22 please?

23 Q Yeah. Should the jury be able to come to a
24 decision that the company was negligent because it didn't
25 go to the customer's home once a year to check the

1 customer's equipment?

2 A I -- I think that that is the process available
3 to customers to take advantage of in the event that they
4 feel that they have a claim.

5 Q Okay. And if it's the Commission's duty to set
6 safety rules, why wouldn't we bring this issue to the
7 Commission and not to 12 people off the street?

8 A Well, it may be that in that court case we
9 learned something about why there might be a need for a
10 requirement to make companies go in more often than the
11 existing once every three years.

12 Q So you're saying that the Public Service
13 Commission can make safety rules, but judges and juries
14 can also make them as they see appropriate? Is that what
15 you're saying?

16 A Judges and juries can make determinations under
17 a specific set of facts related to a specific case. The
18 Commission makes rules that are more general to apply in
19 all cases.

20 And they -- and the Commission rules indicate
21 that they are minimum standards. They don't preclude that
22 down the road we might not find additional things that
23 need to be done or looked at.

24 Q Okay. So if the plaintiff argues in that case,
25 for example, that Laclede provided too much pressure,

1 there was too much gas pressure to the home and that's why
2 the leak occurred and Laclede could show that it followed
3 the Commission's safety rules in pressurizing, would you
4 say that the jury could come to a conclusion that Laclede
5 was negligent and, therefore, liable, even though it had
6 followed the Commission's safety rules?

7 MR. POSTON: Objection. He's asking her to
8 testify as to what a jury would conclude and to speculate
9 as to what a jury would conclude.

10 MR. ZUCKER: No. I'm asking her if the jury
11 concluded that, would that be okay with her from a policy
12 standpoint.

13 MR. POSTON: That's not how I heard the
14 question. So --

15 MR. ZUCKER: Okay. So --

16 A It could -- I -- I'm -- I might not have a
17 problem with that determination.

18 Q (By Mr. Zucker) Okay. And same thing, if the
19 plaintiff's theory was that we had insufficiently odorized
20 the gas, but we were -- but Laclede was able to show that
21 it odorized gas in accordance with the -- the Commission
22 safety rules and a jury found in favor of the plaintiff,
23 would that be okay?

24 A Is it -- did you -- who did you show that you
25 met the odorization rules? I mean, I assume that would be

1 part of whatever proceeding --

2 Q Showed the Court.

3 A -- you're talking about.

4 Q Yes. Yes.

5 A So the Court says yes, you met the Commission's
6 standards, but we expected you to do -- we expected you to
7 do additional things?

8 Q Right. We have a person here that's hurt. We
9 have a home that's damaged. And so, therefore, what you
10 did wasn't enough.

11 A I -- my answer to that, I think, is yes.

12 Q Yes, that's okay?

13 A Yes, that they may find that there are
14 additional things that the company needed to do in
15 addition to the minimum rules set by the Commission in
16 that respect. Yes.

17 Q Okay. Let's say that -- here's a -- moving on
18 to a different hypothetical. Say Laclede undercharges a
19 customer, a residential customer, for three years. The
20 Commission's rules say that Laclede may recover for
21 undercharges up to one year. Would it be okay if Laclede
22 went to court and asked a judge and jury to approve a
23 recovery of three years of the undercharges?

24 A Well, the -- the Commission sets rules related
25 to the charges for utility service. If it were something

1 like a claim of liability or a claim for damage, I view
2 that more like seeking penalties.

3 And the Commission can't order the -- the
4 Commission -- or the Commission can't order a utility to
5 pay a penalty. They can go to court and seek that -- that
6 a penalty be imposed by the legal system.

7 Q Okay. But -- but couldn't -- couldn't Laclede
8 go to court and ask under its specific set of facts
9 whether it was appropriate to charge the customer for
10 three years instead of one?

11 A I guess you could.

12 Q And -- and if a judge or jury agreed with us,
13 would that be okay?

14 A Well, I think it -- I don't know. At that
15 point, I don't know.

16 Q So you don't know when Laclede is changing the
17 rules, but it's okay when the customer is changing the
18 rules?

19 A No. I -- I am not clear on the -- how that
20 would precede then back with the Commission. I mean, the
21 Commission changes decisions or decisions are remanded by
22 a court to reconsider -- I've been involved in cases where
23 that happened. So I -- I'm just not clear on -- on that.
24 I don't know.

25 Q Okay. Okay. So I'm going to go back to the

1 original hypothetical again where the jury found that
2 Laclede should have been in the home every year and the
3 result was a multi-million dollar judgment, and so then,
4 in effect, Laclede has to start performing inspections
5 every year on every home. Is that okay?

6 A If -- I don't know how a jury would find that it
7 should apply in every case when they were evaluating a
8 single case. But if ultimately the Commission determined
9 based on the Court's decision, that it was appropriate for
10 companies to start inspecting every home once a year, then
11 -- and put it in a rule, then I'd expect the companies to
12 follow it.

13 Q And --

14 A And it -- and it would -- and the cost of doing
15 so would be included in rates.

16 Q And you're prepared for your -- your clients,
17 our customers to pay those extra rates because of a -- a
18 decision made by 12 people who had probably had no
19 experience in gas service?

20 A At that point, it's a decision made by the
21 Commission.

22 Q Why is it a decision made by the Commission?

23 A Because I described if it came back to the
24 Commission and the Commission determined that it needed to
25 accommodate that decision or agreed with that decision

1 that it should be incorporated in a rule, then it becomes
2 the Commission's requirement that the companies go, and
3 then, yes, it should be included in -- in revenue
4 requirement determination and rates.

5 Q So if, in this case, Laclede just paid millions
6 of dollars because it didn't go to this home, excuse me,
7 once a year, are you saying Laclede should take on the
8 risk of not -- not doing that, not -- not doing those
9 inspections at that -- at that rate and -- and after its
10 paid millions of dollars because it didn't?

11 A No. I didn't say that.

12 Q Are you saying Laclede should wait for the
13 Commission to decide whether or not it agreed with the
14 jury?

15 A I -- I think that if the company wants to
16 recover it in rates, it's something that needs to be in a
17 rule or other -- or otherwise ordered by the -- ordered by
18 the Commission, required of the company in some manner.

19 Q Okay. So you're saying that Laclede suffers a
20 multi-million dollar verdict, and the company would then
21 start these extra inspections. And then the company would
22 come to the Commission and maybe get that extra money back
23 in rates?

24 A At that point, I think it's the -- the company's
25 evaluation of whether they need to go in and do an annual

1 inspection. It hasn't yet been something that the
2 Commission requires of them.

3 Q But it was something they had to pay for because
4 they didn't?

5 A It was a -- I mean, a single incident where the
6 company then determines that it needs to do something in
7 addition to the Commission's rules.

8 Q Okay.

9 MR. POSTON: I'm sorry. Can I interject for a
10 minute? I didn't know if she was finished with her
11 answer. Were you finished with your answer before
12 Mr. Zucker seemed to cut you off?

13 MR. ZUCKER: I didn't mean to interrupt you. It
14 sounded like --

15 A I think I trailed off. And I was pretty much
16 done.

17 MR. POSTON: Just making sure. Thank you.

18 Q (By Mr. Zucker) So if -- if in -- in that
19 hypothetical the Commission decides it's not reasonable to
20 -- to inspect homes -- to inspect all of our customers'
21 homes every year and we shouldn't do it, which, in fact,
22 they have decided by the safety rules that they do have,
23 is Laclede left, then, to take on the risk of having
24 juries tell them one thing and having the Commission tell
25 them another thing?

1 A No. Not necessarily. The -- the recovery in
2 rates isn't -- or currently. I -- what is recovered in
3 rates recovers your liability.

4 Q Okay. So would Laclede be able to recover --
5 well, I guess if the Commission says no, you don't need do
6 those -- those inspections every year --

7 A If -- if the company went into a home and did
8 inspections every year based on this single event, then
9 came back to the Commission and the Commission did not
10 change their rules to require increased inspections, still
11 that liability that the company incurred is in rates.

12 I mean, certainly, there are -- there is the
13 potential that someone could challenge that as a
14 verticular expense in rates. But I am not aware of that
15 happening, for example, in the last case.

16 And so I think the company would still -- even
17 though it was not a Commission rule that you go every
18 year, I don't think that prohibits you from collecting the
19 cost of liability in your rates.

20 Q So your answer was yes, we would be taking that
21 risk?

22 A No. That's not my answer. I think my answer is
23 no, you're not really taking a risk if you get to recover
24 it.

25 Q And what if the -- the Commission doesn't

1 approve the recovery because, in their view, it's not --
2 it's not necessary to go to homes that often?

3 A If -- if you're doing something that the
4 Commission disallowed, then, yes, I guess it is the
5 company bearing that risk if it was a disallowance
6 approved by the Commission.

7 Q Okay. So we are left in a position where a jury
8 could enforce one set of standards against us and the
9 Commission could enforce a different set?

10 A I think we've worked our way to a very specific
11 example. And so my response to that generally, I think,
12 would be no. Under a specific set of facts, can you work
13 up an example where that might occur where the company
14 would assume the risk of liability? Then yes, I think you
15 could.

16 Q One -- one moment. So -- so a moment ago, you
17 said that if we started to do the annual inspections, we
18 should get to recover that in rates?

19 A If the Commission directed you to do annual
20 inspections, then I think it reasonably would be included
21 in rates.

22 Q Oh, well, let's say the Commission didn't do
23 anything one way or another. We started to do the
24 inspections because we had to pay this large verdict.

25 A I think we walked all the way through that

1 example.

2 Q And -- and -- and you said that we could recover
3 it in rates; is that right?

4 A I said that I think you would recover it in
5 rates unless it was proposed and approved by the
6 Commission as a disallowance.

7 Q Okay. So then if a -- if a jury decided that we
8 did -- we had over-pressurized a -- a line, even though we
9 could show that we had complied with the Commission safety
10 rules, and a jury found -- a jury found that we were
11 liable for that and we then had to change our -- our
12 pressure procedures and -- and incur costs for that, we
13 should recover that cost, also?

14 A Recover it in rates?

15 Q Yes.

16 A If it was something that the Commission required
17 for you to do -- or required you to do, then, yes, I think
18 it should be recovered in rates.

19 Q Again, this is something the jury is requiring
20 of us by telling us that we have to pay a lot of money if
21 we don't do it.

22 A Well, I'm saying if that jury decision causes
23 the Commission to change its rules, to change its --

24 Q Okay.

25 A -- its policy --

1 Q The Commission doesn't do anything.

2 A If -- if the Commission doesn't do anything,
3 then what would typically happen is you would incur that
4 cost. That cost would be reflected in future rates unless
5 there was a specific disallowance proposed.

6 Q Okay.

7 A And I think that I already talked about that
8 process in your other example.

9 Q Right. And that's good. Thank you. Thank you.
10 So -- so what you're saying is that whenever juries decide
11 that they place a different standard on the company, the
12 company -- and the company changes its practice, the
13 ratepayer is on the hook?

14 A The company changes -- the company may change
15 its practice with or without the Commission requiring them
16 to do so.

17 Q Right.

18 A So I can't -- I can't agree with that.

19 Q Okay. If the company is, in effect, disciplined
20 by a jury, by a jury verdict to change its practice, then
21 every time that happens, the customer gets to pay for more
22 safety than they had previously paid for?

23 A If -- ultimately, I think that there is the
24 potential that if -- if someone viewed it as excessive, if
25 the Staff of Public Counsel viewed it as excessive or

1 unreasonable what the company did, then we could propose a
2 disallowance. So I don't necessarily think it would
3 always make its way into rates.

4 MR. ZUCKER: Okay. That's all I have. Thank
5 you, Ms. Meisenheimer.

6 JUDGE DIPPELL: Thank you. Are there any
7 questions from the Commission? Commissioner Kenney?

8 COMMISSIONER KENNEY: No. I don't have any
9 questions. Thank you.

10 MS. MEISENHEIMER: Thank you.

11 JUDGE DIPPELL: I have just -- just a couple.

12 CROSS-EXAMINATION

13 BY JUDGE DIPPELL:

14 Q On page 3 of your rebuttal on line 20, you say,
15 "Public utilities have historically acted to spread risk
16 among and on behalf of all ratepayers in order to gain
17 cost efficiencies and avoid catastrophic loss." Can you
18 just explain what you mean by historically acted to spread
19 risk? What -- what are you referring to there?

20 A Okay. Okay. The third natural monopoly says
21 that a natural monopoly produces cost savings --

22 Q Talk into your microphone.

23 A I'm sorry. The theory of natural monopoly,
24 which is one of the significant justifications for having
25 regulated utilities, is that a natural monopoly, unlike

1 other types of monopoly or oligopolies, can actually
2 benefit customers by achieving lower costs and by
3 providing other benefits.

4 Efficiencies in the economy through not
5 duplicating, for example, pipe running along the road. It
6 wouldn't be very cost effective to have three different
7 companies running a pipe along the road.

8 So we give a designated service area and the
9 things that that natural monopoly then agrees to. Some of
10 those benefits, they agree to serve all customers. They
11 agree to serve all customers at the same set of rates. In
12 other words, they can't charge different sets of rates to
13 customers that are similarly situated, if you will.

14 They provide benefits and reduce costs to
15 investment and plant and other expenses, one of them being
16 related to risk that may be incurred. But a company that
17 insures itself is, in effect, spreading the risk among --
18 among ratepayers. And that -- that's what I was talking
19 about in that -- in that section.

20 Q And then in the -- the sentence following that,
21 you say, "Insurance coverage purchased by the company is a
22 reasonable method of spreading risk." What -- what kind
23 of insurance coverage are you talking about there?

24 A Specifically, I'm talking about, I think,
25 different -- different kinds of insurance. One of those

1 types of insurance would be liability.

2 Q And then on page 6 of that rebuttal, at the very
3 top in the first line, you say, "In certain circumstances,
4 Laclede may not -- may need to exceed the minimum safety
5 requirements to ensure the safe provision of service."
6 Can you give any example there of what you mean, what kind
7 of circumstances?

8 A I want to make sure I'm -- there may be
9 additional things that the -- the Commission determines
10 that would be necessary to ensure the safe transmission
11 and distribution of gas and in excess of the minimum.

12 For example, the minimum standards set forth
13 that the company is required to have a manual of
14 procedures that it follows in cases of emergencies and in
15 terms of the operations of the system.

16 And so if -- if at some point, you know, the
17 company has this manual, but it may be that the Commission
18 determines that it's appropriate that some certain
19 procedure be done in -- in a -- at a higher level or
20 something like that, that might be an example of where
21 something greater than the minimum standards would be
22 appropriate.

23 JUDGE DIPPELL: Okay. Thank you. Commissioner
24 Jarrett, did you have any questions for Ms. Meisenheimer?

25 COMMISSIONER JARRETT: No.

1 JUDGE DIPPELL: Okay. Thank you. Is there any
2 additional cross-examination based on my questions from
3 Staff?

4 MR. BERLIN: No, your Honor.

5 JUDGE DIPPELL: Laclede?

6 MR. ZUCKER: No, your Honor.

7 JUDGE DIPPELL: Is there redirect?

8 MR. POSTON: No, your Honor.

9 JUDGE DIPPELL: Thank you. Ms. Meisenheimer,
10 you are finished.

11 MS. MEISENHEIMER: Thanks.

12 JUDGE DIPPELL: You may be excused. If I am
13 correct, that concludes all of the witnesses that were
14 proposed to testify here today.

15 I guess, then, that leaves us to talk about
16 briefs and when those are going to be filed and so forth.
17 I heard Mr. Poston ask earlier for not only initial
18 briefs, but also reply briefs.

19 MR. POSTON: And that was just because of the
20 legal nature of the arguments. I think replies may be
21 appropriate.

22 JUDGE DIPPELL: Did you have a time schedule in
23 mind for --

24 MR. POSTON: No. Are we on -- what's the clock
25 we're under?

1 JUDGE DIPPELL: Well, the tariff is suspended
2 until December 19th. But I would -- I was hoping to have
3 briefs and stuff in much earlier, given the holidays and
4 so forth. So I was hoping to actually have everything
5 submitted by, like, the 13th of November.

6 MR. POSTON: Were you looking at just one round
7 of briefs, then?

8 JUDGE DIPPELL: That's what I was supposing.

9 MR. POSTON: I mean, I'm not tied to that
10 necessarily. If -- unless, you know, if everyone else
11 just wants one round, then I can live with that. I just
12 think it would be helpful for the Commission to -- to hear
13 responses --

14 JUDGE DIPPELL: Mr. Berlin?

15 MR. POSTON: -- to these legal arguments that I
16 don't necessarily know what's going to be made.

17 JUDGE DIPPELL: You had a comment, Mr. Berlin?

18 MR. BERLIN: Yes. Judge, I believe just one
19 round of briefs is necessary.

20 JUDGE DIPPELL: I -- my thoughts are that we do
21 one round. And if the Commission is puzzled by some of
22 the legal arguments, the Commission will always ask you to
23 give us another round or -- or do oral arguments on a
24 particular legal -- legal point.

25 MR. POSTON: I think one -- one of the issues

1 with me is that, you know, we've alleged that the
2 Commission has not been given this authority.

3 JUDGE DIPPELL: Right.

4 MR. POSTON: And so I'm looking to hear from
5 these parties where the Commission has that authority, so
6 I'm really not going to have any opportunity to respond to
7 that. So -- so most of what I'm going to be pointing to
8 is just the authority has to be given by the statutes and
9 -- so -- and I -- you know, they've referenced cases that
10 I haven't heard those cases. I don't know if they apply
11 -- if they apply in Missouri at all. So --

12 JUDGE DIPPELL: Right. Well, again, I think
13 those are pretty discreet legal issues that we can
14 probably figure out. And if we need a reply, we'll -- and
15 if -- if you feel that you have not gotten sufficient
16 opportunity to reply, you can always ask leave to file a
17 reply brief.

18 MR. POSTON: All right.

19 JUDGE DIPPELL: But I think that I would like to
20 have briefs -- briefs by November 13th. So at this point,
21 I have not expedited the transcripts at all. So they
22 would not be due for ten business days. That would leave
23 you about 20 days or so. Is that --

24 MR. POSTON: That's fine.

25 JUDGE DIPPELL: All right. All right, then.

1 Let's do that. I'll -- I'll issue an order setting
2 briefs. Are there any other matters that need to be taken
3 care of?

4 COMMISSIONER JARRETT: Judge, I have a -- just
5 one thing -- one thing I would like to see briefed is
6 whether or not this tariff violates Article 1, Section 14
7 of the Missouri Constitution, which is the open -- open
8 courts provision.

9 JUDGE DIPPELL: Thank you. Yeah. I just wanted
10 to look back because I made a couple of notes about this
11 something. I think we touched on briefly some things that
12 need -- need to definitely be included in there, and that
13 was the case law and -- and stuff that Mr. Berlin had
14 cited in his opening statement would be helpful, that
15 liability tariff case law.

16 And something that wasn't mentioned at all
17 today, but that I had been curious about not -- not being
18 in the civil court myself, if someone can point to a --
19 any statute of limitations on negligence claims, that
20 would probably be helpful, also.

21 And the last thing I had was it's been mentioned
22 several times in the testimony what the intent of the
23 tariff language is. But I guess I would like to know how
24 it plays out legally if the Court doesn't find the same
25 intent. So -- is there anything else that needs to be on

1 the record?

2 MR. ZUCKER: No, your Honor.

3 JUDGE DIPPELL: All right. Then thank you all
4 very much. We have concluded, and we are adjourned.

5 (The proceedings were concluded at 2:20 p.m. on
6 October 8, 2009.)

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1 REPORTER'S CERTIFICATE

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3 STATE OF MISSOURI)
)ss.
4 COUNTY OF OSAGE)

5

6 I, Monnie S. Mealy, Certified Shorthand Reporter,
7 Certified Court Reporter #0538, and Registered
8 Professional Reporter, and Notary Public, within and for
9 the State of Missouri, do hereby certify that I was
10 personally present at the proceedings as set forth in the
11 caption sheet hereof; that I then and there took down in
12 stenotype the proceedings had at said time and was
13 thereafter transcribed by me, and is fully and accurately
14 set forth in the preceding pages.

15

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal on October 13, 2009.

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21 _____
Monnie S. Mealy, CSR, CCR #0539
22 Registered Professional Reporter

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