

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 3<sup>rd</sup> day of  
February, 2016.

In the Matter of the Application of )  
Laclede Gas Company for a Variance )  
from an EEC Tariff Provision in Its )  
Laclede Service Territory )

**File No. GE-2016-0142**

**ORDER GRANTING VARIANCE**

Issue Date: February 3, 2016

Effective Date: March 4, 2016

On December 9, 2015, Laclede Gas Company ("Laclede"), a regulated public utility, filed a verified application requesting a variance from Laclede's Tariff Sheet R-45-c ("R-45-c"). The Commission approved R-45-c to become effective on September 27, 2013. R-45-c authorizes Laclede to co-deliver a Residential Direct-Install Low Income Program ("Program") with a local utility. Beginning on December 1, 2013, Laclede collaborated with Ameren Missouri for the Program, which completed its second year on December 1, 2015. However, since Ameren Missouri determined it would no longer continue its participation, the Program concluded on December 31, 2015.

R-45-c<sup>1</sup> requires a detailed post-implementation evaluation be completed within six months after the conclusion of the Program's second year.<sup>2</sup> The tariff sheet also requires

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<sup>1</sup> The concluding paragraph of R-45-c states, "A detailed post-implementation evaluation by an independent evaluation contractor selected by the EEC shall be completed within six (6) months following the conclusion of the Program's second year. If feasible, this detailed evaluation will include both a process evaluation and at a minimum, a preliminary cost-effectiveness (impact) evaluation."

<sup>2</sup> Since the Program's second year concluded on December 1, 2015, the independent evaluation would be due by June 1, 2016.

Laclede to hire an independent contractor to conduct the evaluation. Laclede seeks a variance from R-45-c, since it will require an evaluation for a program that no longer exists. Laclede also points out that it will be expensive to hire an independent contractor to perform what will only be an academic evaluation. Laclede states that its Energy Efficiency Collaborative (“EEC”) unanimously supports the requested variance since compliance with R-45-c will not be a cost-effective use of Program resources.

The Commission issued an order directing notice be provided of Laclede’s application, setting a deadline for applications to intervene, and directing the Commission’s Staff to file a recommendation. No applications to intervene were received. On January 14, 2016, the Commission’s Staff filed a recommendation that the Commission grant Laclede’s application for a variance. Staff agrees that the evaluation report is no longer necessary due to the termination of the Program and states it will only expose ratepayers to an unnecessary expense.

Commission rule 4 CSR 240-2.060(4) requires an application for waiver from a tariff provision to establish good cause for granting the variance. Good cause “generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”<sup>3</sup> “Good cause” has also been judicially defined as a “substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”<sup>4</sup> Not just any cause or excuse will do. To constitute good cause, the reason or legal excuse

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<sup>3</sup> *Black’s Law Dictionary* 692 (6th ed. 1990).

<sup>4</sup> *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

given, “must be real not imaginary, substantial not trifling, and reasonable not whimsical.”<sup>5</sup>

A legitimate factual showing is required, not just the mere conclusion of a party or his attorney.<sup>6</sup>

The Commission finds good cause exists to grant the variance from R-45-c since an evaluation of the already terminated Program will not serve the original purpose of the evaluation - to assist in determining the ongoing value of the Program. The value of the Program can be assessed in the detailed description Laclede provided Staff of the struggles/successes and lessons learned in the shared program with Ameren Missouri and a contractor.<sup>7</sup> Therefore, the Commission will grant Laclede a variance from complying with R-45-c.

#### **THE COMMISSION ORDERS THAT:**

1. Laclede Gas Company is granted a variance from complying with the Company’s Tariff Sheet R-45-c, as requested in its Verified Application.

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<sup>5</sup> *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

<sup>6</sup> See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

<sup>7</sup> Laclede’s response to Staff’s Data Request is included as a Highly Confidential attachment to Staff’s Memorandum.

2. This order shall be effective on March 4, 2016.



**BY THE COMMISSION**

*Morris L. Woodruff*

Morris L. Woodruff  
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and  
Coleman, CC., concur.

Burton, Regulatory Law Judge.