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Case No.: GM-2001-342

REBUTTAL TESTIMONY

OF

RYAN KIND

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**Missouri Public
Service Commission**

Submitted on Behalf of
the Office of the Public Counsel

LACLEDE GAS COMPANY
Case No. GM-2001-342

May 17, 2001

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

In The Matter of the Application of Laclede)
Gas Company for an Order Authorizing)
Its Plan to Restructure Itself Into a Holding)
Company, Regulated Utility Company, and)
Unregulated Subsidiaries.)

Case No. GM-2001-342

AFFIDAVIT OF RYAN KIND

STATE OF MISSOURI)
) ss
COUNTY OF COLE)


Ryan Kind, of lawful age and being first duly sworn, deposes and states:

1. My name is Ryan Kind. I am Chief Utility Economist for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony consisting of pages 1 through 21 and schedule(s).
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.



Ryan Kind

Subscribed and sworn to me this 17th day of May 2001.



Notary Public

Joyce C. Neuner
Notary Public, State of Missouri
County of Osage
My Commission Exp. 06/18/2001

REBUTTAL TESTIMONY

OF

RYAN KIND

LACLEDE GAS COMPANY

CASE NO. EM-2001-342

Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.

A. Ryan Kind, Chief Energy Economist, Office of the Public Counsel (Public Counsel or OPC), P.O. Box 7800, Jefferson City, Missouri 65102.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND EMPLOYMENT BACKGROUND.

A. I have a B.S.B.A. in Economics and a MA in Economics from the University of Missouri-Columbia (UMC). While I was a graduate student at UMC, I was employed as a Teaching Assistant with the Department of Economics, and taught classes in Introductory Economics, and Money and Banking, in which I served as a Lab Instructor for Discussion Sections.

My previous work experience includes three and one-half years of employment with the Missouri Division of Transportation as a Financial Analyst. My responsibilities at the Division of Transportation included preparing transportation rate proposals and testimony for rate cases involving various segments of the trucking industry. I have been employed as an economist at the Office of the Public Counsel (Public Counsel or OPC) since April 1991.

Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?

1 A. Yes, prior to this case I submitted written testimony in numerous gas rate cases, several
2 electric rate design cases and rate cases, as well as other miscellaneous gas, water,
3 electric, and telephone cases.

4 **Q. HAVE YOU PROVIDED COMMENTS OR TESTIMONY TO OTHER REGULATORY OR LEGISLATIVE**
5 **BODIES ON THE SUBJECT OF UTILITY RESTRUCTURING?**

6 A. Yes, I have provided comments and testimony to the Federal Energy Regulatory
7 Commission (FERC), the Missouri House of Representatives Utility Regulation
8 Committee, the Missouri Senate's Commerce & Environment Committee and the
9 Missouri Legislature's Joint Interim Committee on Telecommunications and Energy.

10 **Q. HAVE YOU BEEN A MEMBER OF, OR PARTICIPANT IN, ANY WORK GROUPS, COMMITTEES, OR**
11 **OTHER GROUPS THAT HAVE ADRESSED UTILITY RESTRUCTURING ISSUES?**

12 A. Yes. I was a member of the Missouri Public Service Commission's (the Commission's)
13 Stranded Cost Working Group and participated extensively in the Commission's Market
14 Structure Work Group. I am currently a member of the Missouri Department of Natural
15 Resources Weatherization Policy Advisory Committee, the Operating Committee of the
16 North American Electric Reliability Council (NERC), the National Association of State
17 Consumer Advocates (NASUCA) Electricity Committee, and have served as the public
18 consumer group representative to the Midwest ISO's Advisory Committee. Several years
19 ago, I served as a Staff Liaison to the Energy and Transportation Task Force of the
20 President's Council on Sustainable Development.

21 **I. SUMMARY**

22 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

1 A. My testimony will briefly summarize Public Counsel's recommendations regarding
2 Laclede Gas Company's (Laclede's) restructuring application and identify the Public
3 Counsel witnesses that are responsible for specifying OPC's recommended restructuring
4 conditions and the support for those conditions. In addition, I will specify and provide
5 support for conditions that would: (1) preserve the Commission's ratemaking jurisdiction
6 if Laclede's holding company or its successor becomes a registered holding company in
7 the future, (2) require Laclede and its holding company to provide information about
8 employee transfers and diversification plans, (3) provide assurances that the Commission
9 and OPC will have adequate access to the books and records and personnel of Laclede
10 and its affiliates to maintain some oversight over affiliate transactions, diversification
11 activities, merger activities, and financing of the parent holding company and its
12 affiliates, and (4) require Commission approval of any future mergers involving
13 Laclede's holding company (The Laclede Group, Inc.) or one of its affiliates where both
14 the acquiring company and the company to be acquired have a controlling interest in a
15 public utility.

16 **Q. WHAT STANDARD DOES THE COMMISSION USE IN DETERMINING WHETHER TO APPROVE**
17 **RESTRUCTURING APPLICATIONS SUCH AS THE APPLICATION MADE BY LACLEDE IN THIS CASE?**

18 A. Restructuring applications will be approved by the Commission if it finds that the
19 proposed restructuring is not detrimental to the public interest.

20 **Q. HAS LACLEDE PROPOSED ANY CONDITIONS THAT IT BELIEVES WOULD HELP MAKE ITS**
21 **PROPOSED RESTURCURING NOT DETRIMENTAL TO THE PUBLIC INTEREST?**

22 A. Yes, Laclede witness Gerald McNeive identified a couple of conditions that Laclede
23 would agree to adhere to if the Commission approves its application. First, on page 9 of
24 his direct testimony, Mr. McNeive asserted that "Laclede's customers will be protected

1 from any harm associated with affiliate transactions between Laclede Gas Company and
2 the holding company or other non-utility affiliates” because “Laclede has developed and
3 will continue to use accounting procedures in connection with the Proposed Restructuring
4 that will ensure a proper allocation of costs or pricing of transactions between regulated
5 and unregulated operations.” Second, Mr. McNeive commits that, subject to how it
6 interprets current or future laws or regulations, “it will provide access to the books and
7 records of its affiliates as necessary to determine whether any charges to, or payments
8 from, Laclede Gas Company are reasonable.” Third, Laclede asserts, but does not
9 commit itself to the principle that there should be “no dilution of talent or diversion of
10 management attention from the provision of regulated services.”

11 **Q. HAS LACLEDE INDICATED WHETHER IT MIGHT ACCEPT ADDITIONAL CONDITIONS ON ITS**
12 **PROPOSED RESTRUCTURING THAT ARE PROPOSED BY OTHER PARTIES IN THIS CASE?**

13 A. Yes, on page 10 of his testimony, Mr. McNeive states that Laclede may be willing to
14 accept additional conditions.

15 **Q. DOES PUBLIC COUNSEL BELIEVE THAT THE CONDITIONS PROPOSED BY LACLEDE ARE**
16 **SUFFICIENT TO ALLOW THE COMMISSION TO FIND THAT THE PROPOSED RESTRUCTURING IS**
17 **NOT DETRIMENTAL TO THE PUBLIC INTEREST?**

18 A. No. Public Counsel believes that a number of additional conditions would be needed to
19 eliminate the risk of future adverse consequences to ratepayers that could result from the
20 proposed restructuring. These potential future adverse consequences include declines in
21 service quality and increases in prices relative to what would occur absent the
22 restructuring as well as adverse effects on competition in retail and wholesale energy
23 markets. The additional conditions that OPC proposes and the reasons why such
24 additional conditions are necessary are discussed in this testimony and in the testimony of

1 OPC witnesses Mark Burdette and Russell Trippensee. Mr. Burdette's testimony
2 specifies and supports the financial conditions that Public Counsel believes are necessary
3 to prevent the approval of Laclede's application from being detrimental to the public
4 interest. Mr. Trippensee's testimony specifies and supports the accounting conditions
5 that Public Counsel believes are necessary to prevent the approval of Laclede's
6 application from being detrimental to the public interest. These accounting conditions
7 address: (1) the need to have an adequate Cost Allocation Manual (CAM) in place prior
8 to approval of this application and (2) record keeping requirements for transactions costs
9 related to Laclede's holding company restructuring initiative. Mr. Trippensee's
10 testimony also addresses an additional condition regarding the transfer of functions from
11 Laclede to a service company or any other Laclede affiliate.

12 **II. Laclede's Objectives For Its Proposed Restructuring**

13 **Q. WHAT HAS LACLEDE STATED PUBLICLY ABOUT ITS MOTIVATIONS FOR FILING AN APPLICATION**
14 **TO RESTRUCTURE ITSELF INTO A HOLDING COMPANY?**

15 A. In his direct testimony, Laclede witness Gerald McNeive states that the purpose of the
16 proposed restructuring is the establishment of an optimal corporate structure that will
17 allow the Company to more effectively pursue "the unregulated business opportunities
18 afforded by increased competition in the energy industry."

19 Laclede's President and CEO, Douglas Yaeger spoke at length about the holding
20 company initiative at Laclede's Annual Meeting of Shareholders on January 25, 2001.
21 His remarks included the following statements about the benefits that Laclede expects to
22 receive by moving to a holding company structure where Laclede can engage in

1 unregulated activities that occur wholly outside of the Commission's oversight:

2 Our restructured corporation will....look to identify and unlock
3 significant additional value by reinvigorating several existing
4 subsidiaries, and pursuing new ventures that produce sustainable growth.

5 ...

6 Management is firmly convinced that the holding company structure
7 provides it with the greatest **flexibility** and opportunity to grow
8 profitable unregulated energy and business-related enterprises. (emphasis
9 added)

10 ...

11 ...the holding company itself would be unregulated, giving it increased
12 **flexibility** to pursue other ventures in which we see a rational and
13 sustainable fit. (emphasis added)

14 ...

15 ...such a separation is needed to provide The Laclede Group's
16 unregulated subsidiaries with additional financial and operational
17 **flexibility** to pursue business opportunities as they present themselves.
18 (emphasis added)

19 **Q. A CONSISTENT THEME THAT APPEARS IN THE ABOVE QUOTES FROM LACLEDE'S EXECUTIVES IS**
20 **THAT THE COMPANY IS ATTEMPTING TO CREATE A CORPORATE STRUCTURE THAT GIVES IT**
21 **GREATER FLEXIBILITY TO PURSUE UNREGULATED BUSINESS VENTURES. DOES PUBLIC COUNSEL**
22 **BELIEVE THAT LACLEDE'S PRIMARY MOTIVATION IN SEEKING TO RESTRUCTURE ITSELF IS THE**
23 **GREATER FLEXIBILITY AND UNREGULATED EARNINGS POTENTIAL THAT WOULD ACCOMPANY**
24 **THE REDUCED REGULATORY OVERSIGHT OF A HOLDING COMPANY STRUCTURE?**

25 **A. Yes.**

26 **Q. HAVE OTHER UTILITY INDUSTRY ANALYSTS STATED THAT UTILITY RESTRUCTURING INITIATIVES LIKE**
27 **LACLEDE'S ARE DRIVEN BY UTILITY DESIRES FOR LESS REGULATORY OVERSIGHT?**

1 A. Yes. In a February 2, 2001 article about Laclede's restructuring initiative in the St. Louis
2 Post Dispatch, Dr. S. Craig Pirrong (a finance professor at Washington University's Olin
3 School of Business) stated that "Utility companies usually enter into unregulated
4 businesses to boost their profitability and insulate themselves from the Public Service
5 Commission and regulatory scrutiny." Dr Pirrong was also quoted in the article as
6 saying:

7 Companies usually identify business opportunities that they can't pursue
8 as regulated firms. By creating a holding company, they can allow their
9 subsidiary companies to invest in unregulated business.

10 ...

11 There is always a fear that companies might transfer some of the costs
12 from their unregulated business to the regulated one.

13 ...

14 In the ongoing California power crisis, one of the main issues regulators
15 are dealing with is untangling the cross-subsidization between the
16 holding companies and their affiliates.

17 **Q. HAVE ANY OTHER UTILITY INDUSTRY ANALYSTS CITED OTHER POSSIBLE MOTIVATIONS FOR**
18 **LACLEDE'S UTILITY RESTRUCURING AND DIVERSIFICATION INITIATIVES?**

19 A. Yes. The same February 2, 2001 St. Louis Post Dispatch cited above stated that:

20 Some analysts said that, in addition to boosting its bottom line, Laclede
21 could be diversifying into higher-risk businesses to make itself an
22 attractive target for buyers. It is one of the few utility companies in the
23 Midwest that has not been acquired by a larger company.

24 **III. Protecting the Public Interest As Corporate Structures Change**

25 **Q. YOU STATED EARLIER THAT PUBLIC COUNSEL BELIEVES THAT LACLEDE'S PRIMARY**
26 **MOTIVATION IN SEEKING TO RESTRUCTURE ITSELF IS THE GREATER FLEXIBILITY THAT WOULD**
27 **ACCOMPANY THE REDUCED REGULATORY OVERSIGHT OF A HOLDING COMPANY**

1 **STRUCTURE. WOULD THE ADDITIONAL FLEXIBILITY THAT LACLEDE AND ITS AFFILIATES WILL**
2 **OBTAIN IF THE PENDING APPLICATION IS APPROVED WITHOUT ADEQUATE CONDITIONS BE**
3 **DETRIMENTAL TO THE PUBLIC INTEREST?**

4 A. Yes. Approval of the pending application would be detrimental to the public interest
5 unless such approval was conditioned upon: (1) certain restrictions and mandates that
6 protect the public from some of the risk of harm associated with the increased flexibility
7 that Laclede and its affiliates would obtain for investing and engaging in unregulated
8 activities, (2) certain guidelines on affiliate transactions and the ratemaking treatment of
9 these transactions, (3) assurances that the Commission and OPC will have adequate
10 access to the books and records and personnel of Laclede and its affiliates to maintain
11 some oversight over affiliate transactions, diversification activities, merger activities, and
12 financing of the parent holding company and its affiliates, and (4) clarifying that a merger
13 involving Laclede's holding company (The Laclede Group, Inc.) or one of its affiliates,
14 where both the acquiring company and the company to be acquired have a controlling
15 interest in a public utility, cannot be consummated without Commission approval.

16 **Q. HAS THE COMMISSION PREVIOUSLY IMPOSED CONDITIONS ON REGULATED ENERGY UTILITIES**
17 **THAT HAD FILED AN APPLICATION WITH THE COMMISSION TO MERGE AND/OR RESTRUCTURE**
18 **THEMSELVES?**

19 A. Yes. Most recently in the UtiliCorp United, Inc. (UCU) / St. Joseph Light and Power
20 merger the Commission's Report and Order stated that:

21 The Commission's approval of the merger of St. Joseph Light & Power
22 Company with and into UtiliCorp United Inc. is subject to UtiliCorp
23 United Inc.'s agreement to the following conditions:

24 Eight conditions were listed beneath the Commission statement that is quoted above.

IV. Status of the KCPL Holding Company Application

Q. DOES THE COMMISSION CURRENTLY HAVE SIMILAR RESTRUCTURING APPLICATIONS PENDING FOR ANY OTHER MISSOURI ENERGY UTILITIES?

A. Yes. In Case No. EM-2001-464, Kansas City Power & Light (KCPL) has filed a similar application to restructure itself by reorganizing itself into a holding company structure.

Q. DOES THAT CASE CONTAIN MANY OF THE SAME ISSUES THAT ARE PRESENT IN LACLEDE'S APPLICATION?

A. Yes, it does. There were, however, a few differences.

Q. PLEASE ELABORATE ON THOSE DIFFERENCES.

A. First of all, since KCPL is an electric utility and Laclede is a gas utility there were some issues in the KCPL case such as the disposition of rights to purchase generation units that would not apply to Laclede.

Another key difference between the two cases is the stay from the Commission's affiliate rules that has been granted to Laclede. KCPL, unlike Laclede, AmerenUE and some other utilities, did not request a stay from the rules. Because of the stay, special care needs to be taken to ensure that, if Laclede's application is approved, conditions are in place that will protect ratepayers from cross-subsidizing the unregulated affiliates of Laclede.

A third difference between the two cases is that while KCPL will become a "registered" holding company subject to the Public Utility Holding Company Act (PUHCA), Laclede expects to be an "exempt" holding company. Several provisions in the KCPL agreement

1 pertain to preserving the Commission's jurisdiction once KCPL becomes subject to
2 PUHCA requirements and potential PUHCA preemption of state ratemaking authority.
3 While OPC notes that this difference exists today in the "registered" status of KCPL's
4 new holding company and the "exempt" status of Laclede's new holding company, there
5 is no reason to believe that this difference will persist as Laclede and its new holding
6 company pursue plans to expand and diversify its business lines.

7 For example, if Laclede acquired the gas utility business of Ameren in Illinois, then
8 Laclede's holding company would likely become a registered holding company. Also,
9 some industry analysts have predicted that Laclede's restructuring initiative could make it
10 a more attractive acquisition target. If Laclede's holding company were to be acquired
11 by a Company like Dynegy, the parent of Illinois power, then Laclede would presumably
12 become the affiliate of a registered holding company.

13 **Q. HOW IS THE KCPL HOLDING COMPANY CASE PROGRESSING IN COMPARISON TO THE**
14 **LACLEDE HOLDING COMPANY CASE?**

15 A. In the KCPL holding company case (Case No. EM-2001-464) a Stipulation and
16 Agreement between the Commission Staff, OPC, KCPL, and the proposed new KCPL
17 holding company, Great Plains Energy (GPE) was filed with the Commission on May 1,
18 2001. This agreement was the product of lengthy discussions between the parties and is
19 intended to resolve all issues in the case. No testimony was ever filed in the KCPL case
20 due to the settlement. No parties to the case that were not signatories to the settlement
21 have objected to the settlement and requested a hearing. On May 11, 2001 the
22 Commission Staff filed its Staff Response to Commission Order Directing Filing of Staff
23 Suggestions in Support of Stipulation and Agreement in the KCPL case.

V. PSC Jurisdiction and Registered Holding Company Designation

Q. WHAT IS A REGISTERED HOLDING COMPANY?

A. A registered holding company is a public utility holding company that meets the criteria for a registered holding company in the Public Utility Holding Company Act of 1935 (PUHCA).

Q. PLEASE EXPLAIN PUHCA AND ITS RELATIONSHIP TO THE COMMISSION'S RATEMAKING AUTHORITY.

A. On its website, the U.S. Energy Information Agency provides the following summary of "PUHCA Goals and Specifications":

PUHCA was enacted in 1935 and was aimed at breaking up the unconstrained and excessively large trusts that then controlled the Nation's electric and gas distribution networks. The Act was passed at a time when financial pyramid schemes were extensive. These schemes allowed operating utilities in many areas of the country to come under the control of a small number of holding companies, which were in turn owned by other holding companies. These pyramids were sometimes 10 layers thick.

Before PUHCA, almost half of all electricity generated in the United States was controlled by three huge holding companies, and more than 100 other holding companies existed. Their size and complexity made industry regulation and oversight control by the States impossible. After the collapse of several large holding companies, the Federal Trade Commission conducted an investigation after which it criticized the many abuses that tended to raise the cost of electricity to consumers. The Securities and Exchange Commission (SEC) also investigated and publicly charged that the holding companies had been guilty of stock watering and capital inflation, manipulation of subsidiaries, and improper accounting practices.

Under PUHCA, the SEC was charged with the administration of the Act and the regulation of the holding companies. One of the most important features of the Act was that the SEC was given the power to break up the massive interstate holding companies by requiring them to divest their holdings until each became a single consolidated system serving a circumscribed geographic area. Another feature of the law permitted

1 holding companies to engage only in business that was essential and
2 appropriate for the operation of a single integrated utility. This latter
3 restriction practically eliminated the participation of nonutilities in
4 wholesale electric power sales.

5 The law contained a provision that all holding companies had to register
6 with the SEC, which was authorized to supervise and regulate the
7 holding company system. Through the registration process, the SEC
8 decided whether the holding company would need to be regulated under
9 or exempted from the requirements of PUHCA. The SEC also was
10 charged with regulating the issuance and acquisition of securities by
11 holding companies. Strict limitations on intrasystem transactions and
12 political activities were also imposed.

13 PUHCA impacts the ratemaking activities of the Commission mainly through Section 13
14 of PUHCA which addresses transactions between holding company affiliates. Some
15 legal experts argue that affiliate transactions that have been approved by the Securities
16 and Exchange Commission (SEC) cannot be assessed independently by state
17 commissions for ratemaking purposes because of the Ohio Power case (Ohio Power
18 Company v. FERC, 954 F.2d 779 (D.C. Cir.), cert. denied, 498 U.S. 73 (1992)).

19 Marty Kanner commented on the possibility of state commissions being preempted by
20 SEC decisions on affiliate transactions in an article entitled "The Consumer Case for
21 Conditional Repeal of the Holding Company Act" that was published in the February
22 1996 issue of *The Electricity Journal*. In that article, Mr. Kanner stated that:

23 Section 13 of PUHCA addresses registered holding company inter-
24 affiliate transactions. The drafters sought to force holding company
25 affiliates to interact as if such transactions were truly armslength. As the
26 SEC had recognized, Holding Company Act approval of affiliate
27 transactions was designed to establish minimum ground rules, not to
28 substitute for effective rate regulation. Regrettably, a federal court
29 decided in Ohio Power that SEC approval of an affiliate transaction
30 precluded review of the appropriate charges by FERC and, by inference,
31 by state utility commissions. The ruling was made despite the fact that
32 FERC had determined that the cost of coal provided to Ohio Power by a
33 subsidiary exceeded the market price of comparable fuel by as much as
34 100 percent.

35 Consumer advocates insisted that Ohio Power turned PUHCA on its
36 head, shielding from effective regulation precisely those transactions that
37 Congress intended to subject to the most thorough review. Under the

Rebuttal Testimony of
Ryan Kind

1 decision, federal and state rate regulators must pass through without
2 question the full cost of affiliate-provided goods or services. The case
3 would preclude FERC and the states from independently determining (1)
4 whether the utility was justified in its decision to acquire a specific
5 product or service; or (2) once a given purchase decision has been made,
6 whether the utility purchased the good or service at the best available
7 price. Regulatory review of each cost component to ensure that the
8 overall rate is "just and reasonable," which the Federal Power Act
9 requires, would be unavailable.

10 If Ohio Power is not overturned, affiliate supply contracts will proliferate
11 and effective rate regulation of registered holding company operating
12 utilities will be immobilized.

13 **Q. IS LACLEDE CURRENTLY A REGISTERED HOLDING COMPANY?**

14 **A. No.**

15 **Q. IF LACLEDE DOES NOT RESTRUCTURE ITSELF SO THAT IT BECOMES A HOLDING COMPANY**
16 **SUBSIDIARY, IS THERE ANY RISK THAT LACLEDE COULD BECOME A REGISTERED HOLDING**
17 **COMPANY?**

18 **A. No.**

19 **Q. WILL LACLEDE IMMEDIATELY BECOME A REGISTERED HOLDING COMPANY IF THE**
20 **COMMISSION APPROVES ITS APPLICATION IN THIS CASE?**

21 **A. No.**

22 **Q. IF THE COMMISSION APPROVES LACLEDE'S APPLICATION IN THIS CASE, WOULD IT BE**
23 **POSSIBLE FOR LACLEDE'S HOLDING COMPANY OR ITS SUCCESSOR TO BECOME A REGISTERED**
24 **HOLDING COMPANY?**

25 **A. Yes, I believe that would be possible. Furthermore, it may be possible for Laclede's**
26 **holding company to be part of a merger or acquisition transaction in the future that would**

1 cause it to become a registered holding company without any need for Commission
2 approval of the transaction. Because such a transaction might be consummated in the
3 future without Commission approval, appropriate conditions must be applied to Laclede's
4 proposal in this case to ensure that the public is not harmed by being exposed to the risk
5 that the Commission will lose some of its ratemaking jurisdiction as a result of this
6 transaction.

7 **Q. PLEASE DESCRIBE THE CONDITIONS THAT WOULD BE NECESSARY TO PROTECT THE PUBLIC**
8 **FROM THE POSSIBILITY OF SEC PREEMPTION OF THE COMMISSION'S RATEMAKING**
9 **AUTHORITY.**

10 A. When the Commission approved Stipulations and Agreements in the KCPL/Western
11 Resources merger case and the UE/CIPSCO merger case, it approved conditions, to
12 which the applicants agreed, that were intended to preserve the Commission's
13 ratemaking jurisdiction. KCPL and its proposed holding company (Great Plains Power)
14 agreed to similar conditions in the Stipulation and Agreement in its holding company
15 restructuring case that is now pending before the Commission. OPC believes that the
16 Commission should require Laclede Gas Company and its proposed holding company
17 (The Laclede Group) to agree to similar conditions in this case as a condition of having
18 its application approved by the Commission. The conditions relevant to this detriment
19 can be found in Schedule 1.

20 **VI. Information Requirements to Protect to Public Interest**

21 **Q. WHAT INFORMATION DOES PUBLIC COUNSEL BELIEVE THAT LACLEDE AND ITS HOLDING**
22 **COMPANY SHOULD AGREE TO PROVIDE ON A REGULAR BASIS TO PUBLIC COUNSEL AND**
23 **STAFF AS A CONDITION OF THE COMMISSION APPROVING ITS APPLICATION?**

1 A. OPC believes that Laclede and its holding company should agree to provide information
2 about employee transfers and diversification plans.

3 **Q. PLEASE EXPLAIN OPC'S PROPOSED RESTRUCTURING CONDITION REGARDING THE**
4 **PROVISION OF INFORMATION ON EMPLOYEE TRANSFERS.**

5 A. In his direct testimony, Mr. McNeive states on page 9 that "finally, there will be no
6 dilution of talent or diversion of management attention from the provision of regulated
7 services." While Mr. McNeive's statement about the dilution of talent at the regulated
8 utility is a positive sign since he appears to recognize that holding company restructuring
9 initiatives like Laclede's pose a risk to ratepayers if the employees who have received
10 valuable training and experience at the regulated utility are transferred to unregulated
11 operations, he makes no firm commitment that this will not occur. He also fails to
12 propose a procedure for tracking employee transfers between affiliated entities to verify
13 that a dilution of talent is not taking place. For this reason, Public Counsel recommends
14 that the Commission condition any approval of this application on the following
15 requirement:

16 **Within 45 days of the end of each calendar year, Laclede will**
17 **provide Public Counsel and Staff with the following information**
18 **regarding employees that have been transferred either permanently**
19 **or temporarily between Laclede and any of its affiliates within the**
20 **preceding calendar year: employee name, employee job**
21 **description(s), affiliate(s) to which the employee was transferred to**
22 **and from, and date(s) of transfer.**

23 **Q. IS KCPL SUBJECT TO A SIMILAR CONDITION AS A RESULT OF THE STIPULATION AND**
24 **AGREEMENT THAT IT ENTERED INTO IN ITS PENDING RESTRUCTURING APPLICATION?**

25 A. No. There is no similar condition in the KCPL Stipulation and Agreement. Such a
26 condition was not necessary for KCPL since, unlike Laclede, it has stated its intentions to

1 comply with the Commission's Affiliate Transaction Rules. These rules require utilities
2 to maintain records of employee transfer information but they do not apply to Laclede
3 since it has been granted a stay from these rules.

4 **Q. PLEASE EXPLAIN OPC'S PROPOSED RESTRUCTURING CONDITION REGARDING THE**
5 **PROVISION OF INFORMATION ON DIVERSIFICATION PLANS.**

6 A. When a utility or its affiliates diversify into business lines that are unrelated or only
7 distantly related to the core utility functions where a utility has the greatest expertise,
8 ratepayers can be placed at risk for increased financing costs and other strains on the
9 resources of the regulated utility. In addition, diversification activities may have an
10 impact on the complexity and cost of affiliate transactions. Laclede has not made any
11 commitments about which diversification activities it will or will not pursue. It is not
12 unreasonable for the Commission to attempt to protect the public interest by requiring
13 Laclede and its holding company to agree to provide information on diversification plans
14 as a condition of approving a restructuring application. KCPL agreed to this type of
15 condition in the Stipulation and Agreement that it entered into in its pending restructuring
16 application.

17 OPC recommends that the Commission condition any approval of this application on an
18 agreement by Laclede and its holding company to provide the following information
19 about diversification activities:

20 **The Laclede Group and its affiliates (including Laclede) will provide**
21 **the following documents to the Staff and Public Counsel on an**
22 **annual basis:**

- 23 • **All new, revised and updated business plans for The Laclede**
24 • **Group and its affiliates (including Laclede).**
- 25 • **Description of any and all joint marketing/promotional**
26 • **campaigns between Laclede and The Laclede Group and any of**
27 •

its affiliates.

- Narrative description of all products and services offered by The Laclede Group and its affiliates (including Laclede). Laclede is not required to provide narrative descriptions of its tariffed products and services.
- All information provided under this subsection shall be considered "highly confidential" or "proprietary" as those terms are used in 4 CSR 240-2.085, and shall be treated as highly confidential or proprietary information by the Staff and Public Counsel.

At the Commission's request, officers and employees of The Laclede Group or its affiliates will be made available for deposition or cross-examination concerning affiliated transactions affecting Laclede and diversification plans.

VII. Access to Books, Records, and Personnel

Q. PLEASE EXPLAIN OPC'S PROPOSED RESTRUCTURING CONDITION REGARDING ACCESS TO BOOKS, RECORDS AND PERSONEL OF LACLEDE AND ITS AFFILIATES.

A. OPC believes that Laclede's proposed restructuring will be detrimental to the public interest unless Laclede and its holding company agree to a condition that ensures that the Commission and OPC will have adequate access to the books and records and personnel of Laclede and its affiliates to maintain some oversight over affiliate transactions, diversification activities, merger activities, and financing of the parent holding company and its affiliates. In order to remedy this detriment, OPC recommends the following condition:

The Laclede Group and Laclede agree to make available to the Staff and Public Counsel, at reasonable times and places, all books, records, employees and officers of The Laclede Group, Laclede and any affiliate of Laclede as provided under applicable law and Commission rules; provided that Laclede and any affiliate or subsidiary of The Laclede Group shall have the right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that

1 such records and personnel of affiliates or subsidiaries are not
2 subject to the Commission's jurisdiction and statutory authority or
3 are not in the control, custody or possession of Laclede, including
4 objections based on the operation of PUHCA.

5 **Q. DID LACLEDE MAKE ANY COMMITMENTS IN ITS TESTIMONY REGARDING ACCESS TO BOOKS,**
6 **RECORDS AND PERSONEL?**

7 A. In Mr. McNeive's testimony, he made a commitment regarding access to books and
8 records (not personnel), but this commitment doesn't appear to commit them to do
9 anything beyond the legal obligations that they already have today or the legal
10 obligations that Laclede would have in the future, even without this restructuring case.

11 **Q. WHY DO YOU BELIEVE THAT LACLEDE'S "COMMITMENT" REGARDING ACCESS TO BOOKS**
12 **AND RECORDS DOESN'T APPEAR TO COMMIT THEM TO DO ANYTHING BEYOND THE LEGAL**
13 **OBLIGATIONS THAT THEY ALREADY HAVE TODAY OR THE LEGAL OBLIGATIONS THAT LACLEDE**
14 **WOULD HAVE IN THE FUTURE, EVEN WITHOUT THIS RESTRUCTURING CASE?**

15 A. Because of the manner in which Laclede qualified and limited its "commitment." In his
16 testimony, Mr. McNeive stated that:

17 Laclede also commits that, pursuant to applicable current or future laws
18 or regulations, it will provide access to the books and records of its
19 affiliates as necessary to determine whether any charges to, or payments
20 from, Laclede Gas Company are reasonable.

21 By qualifying Laclede's commitment with the statement "pursuant to applicable current
22 or future laws or regulations" Laclede appears to be making its commitment meaningless.

23 **Q. ARE THERE ANY OTHER PROBLEMS WITH LACLEDE'S "COMMITMENT" REGARDING ACCESS TO**
24 **BOOKS AND RECORDS"**

1 A. Yes. As I pointed out earlier Laclede's "commitment" regarding access does not include
2 access to the personnel employed by Laclede or its affiliates. In addition to this
3 deficiency, Laclede's commitment restricts access to access that is necessary to determine
4 the reasonableness of affiliate transactions. There is no commitment that the
5 Commission and OPC will have access to audit and investigate diversification activities,
6 merger activities, and financing of the parent holding company and its affiliates. Also,
7 the access provided to audit and investigate the reasonableness of affiliate transactions is
8 very limited.

9 **Q. PLEASE EXPLAIN THIS LIMITATION.**

10 A. Laclede created this limitation in its "commitment" by limiting any access to that which
11 is necessary "to determine whether any charges to, or payments from, Laclede Gas
12 Company are reasonable." This limitation would mean that the Commission and OPC
13 would not be guaranteed that they would have access to the books and records of Laclede
14 and its affiliates to audit and investigate the reasonableness of affiliate transactions
15 where:

- 16 • Goods and services are provided by Laclede to one of its affiliates for no charge
17 or payment whatsoever.
- 18 • Assets or valuable information are transferred from Laclede to an affiliate for no
19 charge or payment whatsoever.
- 20 • Laclede's affiliates are allowed to use a name, logo, or trademark of Laclede for
21 no charge or payment whatsoever.

22 **VIII. Merger Approval Condition to Protect the Public Interest**

23 **Q. DOES PUBLIC COUNSEL BELIEVE THAT LACLEDE'S PROPOSED HOLDING COMPANY**
24 **RESTRUCTURING PLAN WILL BE DETRIMENTAL TO THE PUBLIC INTEREST UNLESS, AS A**

1 **CONDITION OF ITS RESTRUCTURING APPROVAL, LACLEDE AND THE LACLEDE GROUP, AGREE**
2 **THAT THE LACLEDE GROUP WILL NOT MERGE WITH, ACQUIRE, OR BE ACQUIRED BY ANOTHER**
3 **COMPANY THAT HAS A CONTROLLING INTEREST IN A PUBLIC UTILITY UNLESS THIS**
4 **TRANSACTION IS APPROVED BY THE COMMISSION?**

5 A. Yes. If this type of transaction can be consummated without Commission approval, then
6 the Commission would be powerless to protect the public from transactions that could
7 have significant adverse impacts on the price and quality of service provided by Laclede.
8 If such a situation were created by the proposed holding company restructuring, then the
9 risk created by proposed restructuring would necessarily be detrimental to the public
10 interest.

11 **Q. CAN YOU PROVIDE AN EXAMPLE OF A COMMISSION ACTION THAT WAS BASED ON THE**
12 **NEED TO ELIMINATE OR REDUCE THE RISK OF FUTURE HARM TO THE PUBLIC?**

13 A. Yes. The service line replacement programs that the Commission has ordered gas utilities
14 to undertake were ordered by this Commission to protect the public by reducing the risk
15 of harm to people and property that can result from the failure of gas mains and service
16 lines.

17 **Q. PLEASE EXPLAIN OPC'S PROPOSED RESTRUCTURING CONDITION REGARDING FUTURE**
18 **MERGER OR ACQUISITION TRANSACTIONS INVOLVING LACLEDE'S PROPOSED NEW HOLDING**
19 **COMPANY, THE LACLEDE GROUP.**

20 A. OPC believes that Laclede's proposed restructuring will be detrimental to the public
21 interest unless Laclede and its holding company agree to a condition that ensures that The
22 Laclede Group will not merge with, acquire, or be acquired by another company that has

1 a controlling interest in a public utility unless this transaction is approved by the
2 Commission. Public Counsel recommends the following language for this condition:

3 **The Laclede Group agrees that it will not, directly or indirectly,**
4 **acquire or merge with a public utility or the affiliate of a public**
5 **utility, where such affiliate has a controlling interest in a public**
6 **utility unless The Laclede Group has requested prior approval for**
7 **such a transaction from the Commission and the Commission has**
8 **found that no detriment to the public would result from the**
9 **transaction. In addition, The Laclede Group agrees that it will not**
10 **allow itself to be acquired by a public utility or the affiliate of a**
11 **public utility, where such affiliate has a controlling interest in a**
12 **public utility, unless The Laclede Group has requested prior**
13 **approval for such a transaction from the Commission and the**
14 **Commission has found that no detriment to the public would result**
15 **from the transaction.**

16 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

17 **A. Yes.**
18

Public Counsel's State Jurisdiction Condition

In *Re Western Resources, Inc./Kansas City Power & Light Company*, Case No. EM-97-515, and *Re Union Electric Company/Central Illinois Public Service Company*, Case No. EM-96-149, the Commission approved settlement agreements designed to ensure the protection of customers of Missouri utilities that were to possibly become or became a subsidiary of a Registered Holding Company. Laclede and The Laclede Group hereby agree to those same conditions as set forth below. As used in this Stipulation And Agreement, and in all attachments to this document, any reference to "The Laclede Group" includes both The Laclede Group and its successors in interest.

a. Access to Books, Records and Personnel

The Laclede Group and Laclede agree to make available to the Staff and Public Counsel, at reasonable times and places, all books, records, employees and officers of The Laclede Group, Laclede and any affiliate of Laclede as provided under applicable law and Commission rules; provided that Laclede and any affiliate or subsidiary of The Laclede Group shall have the right to object to such production of records or personnel on any basis under applicable law and Commission rules, excluding any objection that such records and personnel of affiliates or subsidiaries are not subject to the Commission's jurisdiction and statutory authority or are not in the control, custody or possession of Laclede, including objections based on the operation of PUHCA.

The Laclede Group and its affiliates (including Laclede) will provide the following documents to the Staff and Public Counsel on an annual basis:

- All new, revised and updated business plans for The Laclede Group and its affiliates (including Laclede).
- Description of any and all joint marketing/promotional campaigns between Laclede and The Laclede Group and any of its affiliates.
- Narrative description of all products and services offered by The Laclede Group and its affiliates (including Laclede). Laclede is not required to provide narrative descriptions of its tariffed products and services.
- All information provided under this subsection shall be considered "highly confidential" or "proprietary" as those terms are used in 4 CSR 240-2.085, and shall be treated as highly confidential or proprietary information by the Staff and Public Counsel.

At the Commission's request, officers and employees of The Laclede Group or its affiliates will be made available for deposition or cross-examination concerning affiliated transactions affecting Laclede and diversification plans.

b. Contracts Required to be Filed with the SEC

All contracts, agreements or arrangements of any kind, including any amendments thereto, between Laclede and any affiliate, associate, holding, mutual service, or subsidiary company within the same holding company system, as these terms are defined in 15 U.S.C. § 79b, as subsequently amended, that are required to be filed with and/or approved by the Securities and Exchange Commission ("SEC") pursuant to PUHCA, as subsequently amended, shall be conditioned upon the following without modification or alteration: Neither Laclede nor any of its affiliates, will seek to overturn, reverse, set aside, change or enjoin, whether through appeal or the initiation or maintenance of any action in any forum, a decision or order of the Commission which pertains to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost (including cost of capital) or allocation incurred or accrued by Laclede in,

or as a result of, a contract, agreement, arrangement, or transaction with any affiliate, associate, holding, mutual service or subsidiary company on the basis that such expense, charge, cost (including cost of capital) or allocation has itself been filed with or approved by the SEC or was incurred pursuant to a contract, arrangement, agreement or allocation method that was filed with or approved by the SEC.

c. No Pre-Approval of Affiliated Transactions

Laclede agrees to provide the Commission and Public Counsel with copies of all documents that must be filed with the SEC relating to affiliate transactions. Laclede and The Laclede Group further agree that the Commission may make its determination regarding the ratemaking treatment to be accorded these transactions in a subsequent ratemaking proceeding.

**d. Contingent Procedure Stipulation Regarding
Affiliate Contracts Required to be Filed with SEC**

Laclede agrees that in the exclusive event that any court with jurisdiction over Laclede, The Laclede Group or any of their affiliates or subsidiaries issues an opinion or order that invalidates a decision or order of the Commission pertaining to recovery, disallowance, deferral or ratemaking treatment of any expense, charge, cost (including cost of capital) or allocation incurred or accrued by Laclede on the basis that such expense, charge, cost (including cost of capital) or allocation has itself been filed with or approved by SEC, then the Contingent Procedure Stipulation, attached hereto as Exhibit A, shall apply to SEC filings according to its terms, at the option of the Commission.

CONTINGENT PROCEDURE STIPULATION

1.0 APPLICABILITY

- 1.1 Principles stated in this Contingent Procedure Stipulation ("Procedure Stipulation") shall govern the situations described in Sections II (e) and (f) of the Stipulation And Agreement.
- 1.2 Changes to this Procedure Stipulation may be proposed from time-to-time by Laclede Gas Company ("Laclede") or The Laclede Group, the Commission Staff or the Office of the Public Counsel ("OPC" or "Public Counsel"), subject to the approval of the Commission; provided, however, that Laclede, the Commission Staff and the OPC shall meet and discuss any such proposed changes prior to the submission of such changes to the Commission by Laclede or The Laclede Group, the Commission Staff or the OPC.

2.0 DEFINITIONS

When used in this Procedure Stipulation, the following terms shall have the respective meanings set forth below:

- 2.1 "Affiliate" means an entity that is The Laclede Group, a subsidiary of Laclede, a subsidiary of The Laclede Group (other than Laclede), or other subsidiary within the Holding Company organization.
- 2.2 "Affiliate Contract" means an Affiliate Operating Contract, an Affiliate Sales Contract, an Affiliate Surety Contract, a Section 205 Contract, a Service Agreement, or an amendment to any such contract.
- 2.3 "Affiliate Operating Contract" means a contract, other than a Section 205 Contract, between Laclede and one or more of its Affiliates providing for the operation of any part of Laclede's generating, transmission and/or distribution facilities by such Affiliate(s).
- 2.4 "Affiliate Sales Contract" means a contract, other than an Affiliate Operating Contract or a Section 205 Contract, between Laclede and one or more of its Affiliates involving the purchase of Assets, Goods or Services.
- 2.5 "Affiliate Surety Contract" means a contract between Laclede and one or more of its Affiliates involving the assumption by Laclede of any liability as a guarantor, endorser, surety, or otherwise in respect of any security or contract of an Affiliate.

- 2.6 "Assets" means any land, plant, equipment, franchises, licenses, or other right to use assets.
- 2.7 "Commission" means the Missouri Public Service Commission or any successor governmental agency.
- 2.8 "Commission Staff" or "Staff" means the Staff of the Missouri Public Service Commission.
- 2.9 "Entity" means a corporation or a natural person.
- 2.10 "FERC" means the Federal Energy Regulatory Commission, or any successor governmental commission.
- 2.11 "Goods" means any goods, inventory, materials, supplies, appliances, or similar property (except electric energy and capacity).
- 2.12 "Non-Utility Affiliate" means an Affiliate which is neither a public utility nor a Utility Service Company.
- 2.13 "OPC" or "Public Counsel" means the Office of the Public Counsel.
- 2.14 "Review Period" means a period of ninety (90) consecutive calendar days commencing on the first day immediately following the date that Laclede or The Laclede Group submits an Affiliate Contract to the Commission for the Commission Staff's review. Any part of the Review Period for a particular Affiliate Contract may be waived by agreement of Laclede, the Commission Staff and the OPC.
- 2.15 "SEC" means the United States Securities and Exchange Commission, or any successor governmental agency.
- 2.16 "Section 205 Contract" means an interconnection, interexchange, pooling, operating, transmission, power sale or ancillary power services contract or similar contract entered into between Laclede and an Affiliate and subject to regulation by the FERC pursuant to § 205 of the Federal Power Act, 15 U.S.C. § 824d, or any successor statute.
- 2.17 "Service Agreement" means the agreement entered into between Laclede, The Laclede Group, and an affiliated or subsidiary service company, under which services are provided by such services company to Laclede and The Laclede Group.
- 2.18 "Services" means the performance of activities having value to one party, such as managerial, financial, accounting, legal, engineering, construction, purchasing,

marketing, auditing, statistical, advertising, publicity, tax, research, and other similar services.

- 2.19 "Subsidiary" means any corporation 10 percent (10%) or more of whose voting capital stock is controlled by another Entity; Subsidiaries of The Laclede Group are those corporations in which The Laclede Group owns directly or indirectly (or in combination with The Laclede Group's other Affiliates) 10 percent (10%) or more of such corporation's voting capital stock.
- 2.20 "Laclede's Holding Company" means The Laclede Group or its successor in interest.
- 2.21 "Utility Affiliate" means an Affiliate of Laclede which is also a public utility.
- 2.22 "Utility Service Company" means an Affiliate whose primary business purpose is to provide administrative and general or operating services to Laclede and Utility Affiliate(s).

3.0 AFFILIATE CONTRACTS REQUIRED TO BE FILED WITH THE SEC

The following will apply to Affiliate Contracts that are required to be filed with the SEC.

- 3.1 Prior to filing any such Affiliate Contract with the SEC or the Commission, Laclede will submit to the Commission Staff, the OPC, and the appropriate parties requesting a copy, a copy of the Affiliate Contract which it proposes to file with the SEC and the Commission.
 - 3.1.1 If the Commission Staff clears the contract for filing, or does not object to it, and no objections from affected parties are submitted to Laclede (with a copy to the Commission Staff) during the Review Period for such contract, Laclede may file such contract with the SEC and the Commission. The contract will become effective upon the receipt of all necessary regulatory authorizations and will continue in effect until it is terminated pursuant to its terms or is amended or superseded, subject to the receipt of all necessary regulatory authorizations.
 - 3.1.2 If, during the expiration of the Review Period for such contract, the Commission Staff recommends that the Commission reject, disapprove or establish a proceeding to review such contract, or if an objection(s) is submitted to Laclede (with a copy to the Commission Staff) by an affected party (or parties), Laclede may file the contract with the Commission, but shall not file the contract with the SEC until at least thirty (30) days after the date that it is filed with the Commission; provided, that both such filings shall disclose the Commission Staff's recommendation or the objection(s) regarding the contract; provided, further, that if the Commission, within twenty (20) days after the contract is filed, institutes a proceeding to review such contract, Laclede shall not file the contract

with the SEC unless and until Laclede receives a Commission Order which resolves issues raised with regard to the contract and which does not reject or disapprove the contract. The contract will become effective upon the receipt of all necessary regulatory authorizations and will continue in effect until it is terminated pursuant to its terms or is amended or superseded, subject to the receipt of all necessary authorizations.

3.2 After the Affiliate Contract has been filed with the Commission, the Commission may in accordance with Missouri law, reject or disapprove the contract, and upon such rejection or disapproval:

3.2.1 If such contract has not yet been accepted or approved by the SEC, Laclede will, as soon as possible, file to seek to withdraw its filing requesting SEC acceptance or approval of such contract; or

3.2.2 If such contract has been accepted or approved by the SEC and none of the other contracting parties are Utility Affiliates subject to any other state utility regulatory commission's jurisdiction, Laclede will:

a. terminate such contract according to its terms; or

b. at its sole option, take such steps as are necessary to cause such contract to be amended in order to remedy the Commission's adverse findings with respect to such contract; Laclede will refile such amended contract with both the Commission and the SEC; such amendment will become effective only upon the receipt of all necessary regulatory authorizations, and the previous contract (to the extent already in effect) will remain in effect until such authorizations are received; if the SEC does not finally accept or approve such amendment within one (1) year from the date of Laclede's filing of such amendment with the SEC, Laclede will, upon request of the Commission, terminate the contract according to its terms.

3.2.3 If such contract has been accepted or approved by the SEC, and one or more of the other contracting parties are Utility Affiliates subject to another state utility regulatory commission's jurisdiction, Laclede will make a good faith effort to terminate, amend or modify such contract in a manner which remedies the Commission's adverse findings with respect to such contract. Laclede will request to meet with representatives from the affected state commissions and make a good faith attempt to resolve any differences in their respective interests regarding the subject contract. If agreement can be reached to terminate, amend, or modify the contract in a manner satisfactory to the contracting parties and the representatives of each state commission, Laclede shall file such amended contract with the Commission and the SEC under the procedures set forth in this Section 3. If no agreement can be reached satisfactory to each contracting party and to each

affected state commission, after good faith negotiations, Laclede has no further obligations under this Procedure Stipulation. Nothing herein affects, modifies or alters in any way the rights and duties of the Commission under applicable state and federal law.