BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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**

STAFF REPORT AND RECOMMENDATION TO APPROVE VARIANCE

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, files this *Staff Report and Recommendation to Approve Variance* ("Report") with the Missouri Public Service Commission ("Commission"), and respectfully states:

1. On December 9, 2015, Laclede Gas Company ("Laclede") filed its *Verified Application for Approval of a Variance from an EEC Tariff Provision* seeking a variance from Laclede Tariff Sheet R-45-c for good cause. Specifically, Laclede seeks relief from a requirement to have an independent evaluation conducted within six (6) months following the second year of its Residential Direct-Install Low Income Program ("Program"), which Laclede co-delivered with Ameren Missouri. Laclede asserts good cause for relief exists as Ameren Missouri decided to not extend the Program, which concluded December 31, 2015.

2. On December 9, 2015, the Commission ordered its *Notice of Application and Order Directing Filing* instructing, in part, that Staff file a recommendation on the application no later than January 14, 2016.

Authority and Recommendation

3. The Commission Rule 4 CSR 240-3.015 identifies the requirements for filing variances to tariff provisions consistent to the filing requirements detailed in 4 CSR

240-2.060. Additionally, 4 CSR 240-2.060(4) requires that applications for variances or state the reasons for the proposed variance and a complete justification setting out the good cause for granting the variance.

4. "Good cause" "generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law."[1] Similarly, "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."[2] Laclede argues that compliance with its tariff produces an evaluation for a program that no longer exists.[3] Staff concurs that the report is no longer necessary as the Program is terminated and if performed would expose ratepayers to an unnecessary expense.

5. Staff finds that good cause exists for Laclede to be granted a variance from its tariff. In response to Staff DR 1, Laclede provided updated monthly information for the two years the program existed. As Staff is satisfied with the information provided regarding the operation of the Program, it sees no reason to require performance of any additional study.

6. Staff recommends that the Commission grant Laclede's request for variance for good cause from Laclede Tariff Sheet R-45-c and its requirement to

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[1] *Black's Law Dictionary*, p. 692 (6th ed. 1990).

[2] *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective "ordinary person" standard. *See Central. 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.")

[3] Laclede also argued the process of obtaining an independent contractor and the expense to perform the report was an additional good cause basis for the variance from its tariff, however Laclede failed to provide any evidence of costs in its pleading or before the EEC. In determining relief for good cause, some legitimate factual showing is required, not just the mere conclusion of a party or his attorney. *See generally Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975). Staff agrees that the report would be prepared at some expense, and if the variance is not granted that expense will be borne by the ratepayers, but no evidence has been provided to substantiate the extent of the expense.

complete a post-implementation evaluation by an independent evaluation contractor within six (6) months following the conclusion of the program's second year.

WHEREFORE, the Staff respectfully submits this *Staff Report and Recommendation to Approve Variance*, and recommends the Commission approve the proposed variance from Laclede Tariff Sheet R-45-c as requested herein.

Respectfully submitted,

/s/ Hampton Williams
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 14th day of January, 2016.

/s/ Hampton Williams