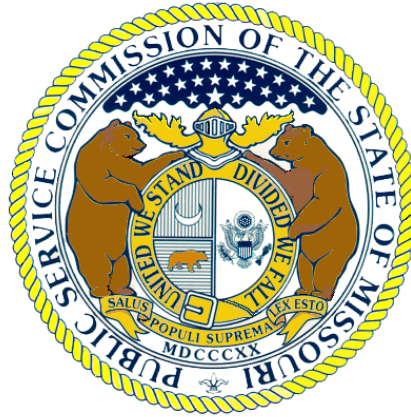


BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



In the Matter of Laclede Gas Company's Tariff to)
Increase Its Annual Revenues for Natural Gas Service)

File No. GR-2010-0171
Tariff No. YG-2010-0376

REPORT AND ORDER

Issue Date: August 18, 2010

Effective Date: August 18, 2010

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REPORT AND ORDER

The Missouri Public Service Commission is determining the terms of, and charges for, the gas services of Laclede Gas Company ("Laclede Gas") as set forth in the *Partial Stipulation and Agreement*¹ and the *Second Stipulation and Agreement*.² Such terms include a revenue increase of approximately \$ 31,400,000, but Laclede Gas is already collecting \$ 10,912,000 of that amount as infrastructure system replacement surcharge ("ISRS"). The Commission is rejecting the pending tariff assigned Tracking No. YG-2010-0376, and ordering Laclede Gas to file a new tariff in compliance with this *Report and Order*.

The Commission makes each ruling on consideration of all allegations and arguments of each party, and the substantial and competent evidence upon the whole record. But the Commission does not specifically address matters that are not dispositive. The Commission's findings reflect its determinations of credibility.

On those grounds, the Commission independently finds and concludes as follows.

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¹ Filed on May 25, 2010.

² Filed on August 3, 2010.

I. Appearances

Michael C. Pendergast, Vice President and Associate General Counsel, and **Rick Zucker**, Assistant General Counsel – Regulatory, Laclede Gas Company, 720 Olive Street, Room 1520, St. Louis, MO 63101, for Laclede Gas Company.

Lera Shemwell, Deputy General Counsel, Attorney for the Staff of the Missouri Public Service Commission, P. O. Box 360, Jefferson City, MO 65102, for the Commission's Staff.

Marc D. Poston, Senior Public Counsel, P. O. Box 2230, Jefferson City MO 65102, for Office of the Public Counsel.

Lisa C. Langeneckert, 600 Washington Avenue, 15th Floor, St. Louis, MO 63101-1313, for Missouri Energy Group.

Diana M. Vuylsteke, 211 N. Broadway, Suite 3600, St. Louis, Missouri 63102, for Missouri Industrial Energy Consumers.

Michael A. Evans and **Sherrie A. Schroeder** with Hammond, Shinnors, Turcotte, Larrew and Young, P.C., 7730 Carondelet Avenue, Suite 200, St. Louis, MO 63105, for USW Local 11-6.

Shelley A. Woods and **Sarah Mangelsdorf**, Assistant Attorneys General, P.O. Box 899, Jefferson City, Missouri 65102, for Missouri Department of Natural Resources.

Daniel Jordan, Regulatory Law Judge.

II. Procedural History

On December 4, 2009, Laclede Gas filed tariffs. The tariffs proposed an increase in revenue of approximately \$60.7 million, of which Laclede stated it was already collecting approximately \$8.1 million as ISRS. The tariffs bore an effective date of January 4, 2010.

By order dated December 10, 2009, the Commission suspended the tariffs until November 4, 2010, the maximum time allowed by statute.³ The suspension of the tariffs initiated a contested case.⁴ Also in that same order, the Commission directed that notice of

³ Section 393.150, RSMo 2000.

⁴ Section 393.150.1, RSMo 2000; and Section 536.010(4), RSMo Supp. 2009.

this action be provided to the public and to certain parties, and set a deadline for filing applications to intervene.

By orders dated January 13 and 14, 2010, the Commission granted applications to intervene from all persons filing them:

- Missouri Energy Group.
- Missouri Industrial Energy Consumers.
- USW Local 11-6.
- Missouri Department of Natural Resources.

By order dated February 1, 2010, the Commission issued a procedural schedule. Also in the February 1, 2010, order, the Commission ruled on the dates of a test year, and the update period for known and measurable changes, relevant to setting Laclede Gas's rates. As to other significant items relevant to Laclede Gas's rates ("true-up"), the Commission reserved ruling on a period and accounts in that same order.

In May and June 2010, the Commission conducted seven local public hearings in Laclede Gas's service territory to take comments from Laclede Gas's customers and the public regarding this action. By July 20, 2010, the parties pre-filed all direct, rebuttal, and sur-rebuttal testimony, except as to the true-up period.

On July 23, 2010, the parties filed the *Partial Stipulation and Agreement*, which provided that it eliminated the need for a true-up period, accounts, and hearing. On July 26, 2010, the parties filed a Joint Statement of Issues. On July 28, 2010, the parties asked to suspend the procedural schedule. The parties filed the *Second Stipulation and Agreement*, which included specimen tariffs, on August 3, 2010. The *Partial Stipulation and*

Agreement and *Second Stipulation and Agreement* (together, “settlement”) resolve all issues between all parties, so the settlement is unanimous.

III. Settlement

The *Second Stipulation and Agreement* provides that the parties will either separately reach agreement, or seek this Commission’s decision, at a later date as to certain matters (“deferred matters”). Deferred matters appear in the *Second Stipulation and Agreement* at paragraphs:

9(c) Modifications to Low-Income Assistance Program.

10(d) Disputed Matters as to Low-Income Weatherization Program.

This *Report and Order* includes no determination on the deferred matters.

As to deferred matters and all other issues, the settlement disposes of this action, so the Commission need not separately state its findings of fact.⁵ The settlement also waives procedural requirements that would otherwise be necessary before final decision.⁶ Those requirements include each commissioner’s duty to either hear all the evidence or read the full record.⁷

The settlement includes a stipulation to enter all pre-filed testimony into the record.⁸ On August 6, 2010, all parties other than MIEC filed a *Motion to Have Testimony, as Filed in EFIS, Received into Evidence by Reference*. MIEC’s deadline to file any response was noon on August 13, 2010.⁹ MIEC filed no response. The Commission granted that motion later in the day on August 13, 2010.

The record therefore contains substantial and competent evidence. The

⁵ Section 536.090, RSMo 2000.

⁶ Section 536.060, RSMo 2000.

⁷ Section 536.080.2, RSMo 2000.

⁸ *Partial Settlement and agreement*, paragraph 23; *Second Settlement and Agreement*, paragraph 15.

⁹ Order dated August 9, 2010.

Commission independently finds that such evidence weighs in favor of the settlement's provisions. The Commission incorporates such provisions into this *Report and Order*.

Nevertheless, the Commission also sets forth its independent conclusions and decision¹⁰ as follows.

IV. Jurisdiction

Because the Commission is a creature of statute, the statutes determine the Commission's jurisdiction, and the Commission should explain its jurisdiction in every case.¹¹

The Commission's jurisdiction generally includes every public utility:

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

* * *

(5) To all public utility corporations and persons whatsoever subject to the provisions of this chapter [386, RSMo] as herein defined [. ¹²]

Chapter 386, RSMo, defines public utility corporations to include:

(43) . . . every . . . gas corporation [as] defined in this section [. ¹³]

That section provides the following definitions:

(18) "Gas corporation" includes every [entity] owning, operating, controlling or managing any gas plant operating for public use under privilege, license or franchise now or hereafter granted by the state or any political subdivision, county or municipality thereof [. ¹⁴]

¹⁰ Section 386.420.2. All sections are in the 2000 Revised Statutes of Missouri unless otherwise stated.

¹¹ ***Greene County Nursing & Care Center v. Department of Social Servs.***, 807 S.W.2d 117, 118-19 (Mo. App., W.D. 1991).

¹² Section 386.250, RSMo 2000.

¹³ Section 386.020, RSMo Supp. 2009.

¹⁴ *Id.*

Those provisions include Laclede Gas because the Commission has certified Laclede Gas to provide gas service in the region of St. Louis, Missouri, where it serves approximately 630,000 customers.

The Commission's jurisdiction includes:

(1) . . . general supervision of all gas corporations [.¹⁵]

Regulating Laclede Gas's services and rates is specifically within the Commission's jurisdiction:

The commission shall:

* * *

(11) Have power to require every gas corporation . . . to file with the commission . . . schedules showing . . . and all rules and regulations relating to rates, charges or service [.]

* * *

No corporation shall charge . . . different compensation for any service . . . than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time [.¹⁶]

Such schedules—or “tariffs”—and are subject to the Commission's decision:

Whenever there shall be filed with the commission by any [utility] any [tariff], the commission [may] enter upon a hearing concerning the propriety of such [tariff], upon its own initiative[.¹⁷]

This action began with the filing with the Commission of tariffs proposing changes in terms of, and rates for, service.

¹⁵ Section 393.140, RSMo 2000.

¹⁶ *Id.*

¹⁷ Section 393.150.1, RSMo 2000.

V. Service

The standard for service requires Laclede Gas to:

[F]urnish and provide such service instrumentalities and facilities as shall be safe and adequate [.]¹⁸

Upon review of the record and the settlement, the Commission independently finds and concludes that the settlement's proposed terms support safe and adequate service. Without further discussion, the Commission incorporates such provisions, as if fully set forth, into this *Report and Order*.

VI. Rates

The standard for rates is "just and reasonable,"¹⁹ a standard founded on constitutional provisions, as the United States Supreme Court has explained:

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.²⁰

But the Commission must also consider the customers:

The rate-making process . . . i.e., the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests.²¹

Further, that balancing has no single formula:

The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.²²

¹⁸ Section 393.130.1, RSMo Supp. 2009.

¹⁹ *Id.* and Section 393.150.2, RSMo 2000.

²⁰ ***Bluefield Water Works & Improvement Co. v. Public Serv. Com'n of the State of West Virginia***, 262 U.S. 679, 690 (1923).

²¹ ***Federal Power Com'n v. Hope Natural Gas Co.***, 320 U.S. 591, 603 (1944).

²² ***Federal Power Com'n v. Natural Gas Pipeline Co.***, 315 U.S. 575, 586 (1942).

Moreover, making such pragmatic adjustments is part of the Commission's duty:

What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts.²³

And:

[T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.'²⁴

Thus, the law requires a just and reasonable end, but does not specify a means:

Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. It is not theory but the impact of the rate order which counts.²⁵

The specimen tariffs accompanying the settlement show that the parties have employed a system of policy decisions and accountancy conventions approved by law as follows.

a. Rate Adjustment

Determining whether a rate adjustment is necessary requires comparing Laclede Gas's current net income to Laclede Gas's revenue requirement. Revenue requirement is the amount of money that a utility may collect per year, which depends on the requirements for providing safe and effective service at a profit. Those requirements are tangible and intangible:

From the investor or company point of view it is important that there be enough revenue not only for operating expenses but

²³ *Bluefield*, 262 U.S. at 692.

²⁴ *State ex rel. Associated Natural Gas Co. v. Public. Serv. Com'n*, 706 S.W.2d 870, 873 (Mo. App., W.D. 1985) (citing *Hope Natural Gas Co.*, 320 U.S. at 602-03).

²⁵ *Id.*

also for the capital costs of the business. These include service on the debt and dividends on the stock.²⁶

That and similar holdings have led to a conventional analysis of the resources devoted to service, from which the Commission determines revenue requirement as follows.

To provide service, a utility devotes resources, which accounting conventions classify as either expense or investment. Expenses include operation, replacement of capital items as they depreciate (“current depreciation”), and taxes on the return. Investment is the basis (“rate base”) on which the utility seeks profit (“return”). Return is therefore a percentage (“rate of return”) of rate base. Rate base includes capital assets (“gross plant”), less historic deterioration of such assets (“accumulated depreciation”), plus other items.

Those components relate to each other in the following formula:

$$\begin{aligned} \text{Revenue Requirement} &= \text{Expenses} + \text{Return on Rate Base} \\ &\qquad \qquad \qquad \text{Rate of Return} \times \text{Rate Base} \\ &\qquad \qquad \qquad \text{Cost of Capital} \times \text{Capital Invested} \end{aligned}$$

where:

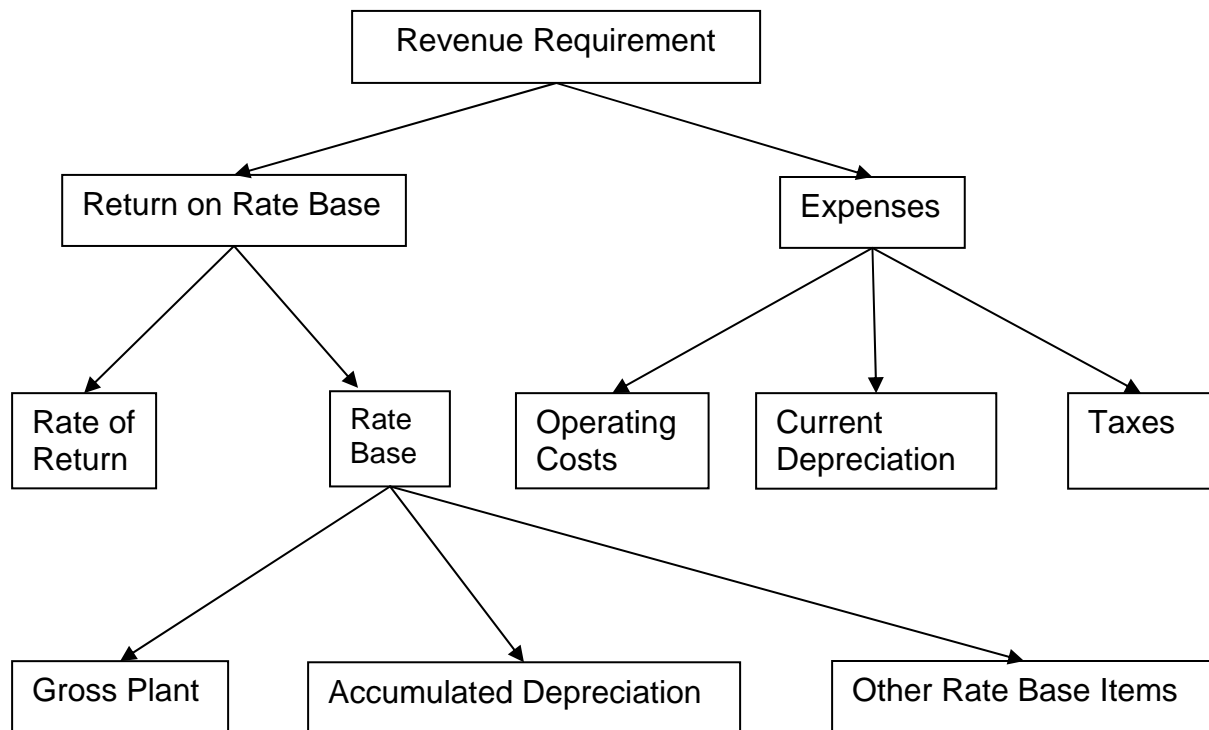
$$\text{Capital Invested} = \text{Gross Plant} - \text{Accumulated Depreciation on Plant} + \text{Other Items}$$

and:

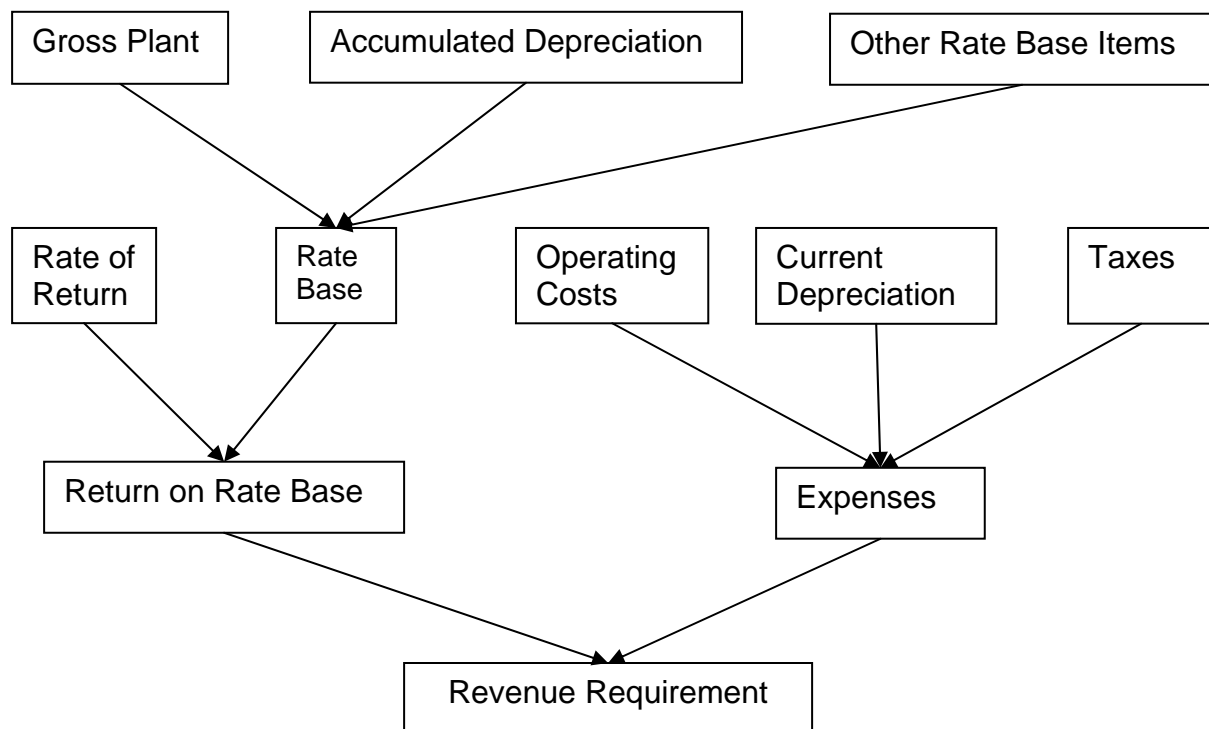
$$\text{Expenses} = \text{Operating Costs} + \text{Current Depreciation} + \text{Taxes}$$

Thus, the revenue requirement breaks down into its elements as follows.

²⁶ *Hope Natural Gas Co.*, 320 U.S. at 603 (1944).



Conversely, determining the revenue requirement means putting those elements together.



But determining that amount does not end the analysis, because the utility must collect that amount from its customers, and all customers need not receive identical treatment.

b. Rate Design

Rate design is how a utility distributes its revenue requirement among its various classes of customer. Customers vary as to the costs attributable to their service. Accordingly, their rates should reflect their costs, respectively. Just and reasonable rates may account for such differences among customers.

c. Rates Proposed in the Settlement

A utility has the burden of proving that increased rates are just and reasonable²⁷ by a preponderance of the evidence.²⁸ The Commission has compared the substantial and competent evidence on the whole record with the settlement as to both rate adjustment and rate design. The Commission independently finds and concludes that the rates proposed in the settlement are just and reasonable rates. Therefore, the Commission incorporates such provisions, as if fully set forth, into this *Report and Order* without further discussion.

VII. Expedited Filing

The parties ask for approval of tariffs effective for service on and after September 1, 2010. The parties have also already agreed to specimen tariffs that accompany the Second Stipulation and Agreement. Therefore, the Commission will order the filing of tariffs in compliance with this Report and Order on an expedited basis.

THE COMMISSION ORDERS THAT:

1. All pre-filed testimony is entered into the record.
2. The tariff sheets filed by Laclede Gas Company, to which the Commission assigned tariff number YG-2010-0376 are rejected.

²⁷ Section 393.150.2, RSMo 2000.

²⁸ *State Board of Nursing v. Berry*, 32 S.W.3d 638, 641 (Mo. App., W.D. 2000).

3. Laclede Gas Company shall file a new tariff consistent with this *Report and Order* no later than August 20, 2010.

4. As to the tariff described in ordered paragraph 3, the Commission's staff shall file its recommendation no later than August 23, 2010.

5. The Commission makes no determination as to the deferred matters described in the body of this *Report and Order*.

6. This *Report and Order* shall become effective when issued.

BY THE COMMISSION

(S E A L)



Steven C. Reed
Secretary

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC., concur;
and certify compliance with the provisions of
Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this August 18, 2010.