

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

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| The Staff of the Missouri Public Service Commission, |) | |
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| Complainant, |) | |
| v. |) | <u>Case No. GC-2011-0098</u> |
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| Laclede Gas Company, |) | |
| Respondent. |) | |

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| In the Matter of Laclede Gas Company's Purchased Gas Adjustment (PGA) Factors to be Audited in its 2004-2005 Actual Cost Adjustment |) | <u>Case No. GR-2005-0203</u> |
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| In the Matter of Laclede Gas Company's Purchased Gas Adjustment for 2005-2006 |) | <u>Case No. GR-2006-0288</u> |
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| In the Matter of Laclede Gas Company's Purchased Gas Adjustment for 2006-2007 |) | <u>Case No. GR-2008-0140</u> |
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| In the Matter of Laclede Gas Company's Purchased Gas Adjustment for 2007-2008 |) | <u>Case No. GR-2008-0387</u> |
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| In the Matter of Laclede Gas Company's Purchased Gas Adjustment for 2008-2009 |) | <u>Case No. GR-2010-0138</u> |
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| In the Matter of Laclede Gas Company's 2009-2010 Actual Cost Adjustment Filing |) | <u>Case No. GR-2011-0055</u> |
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| In the Matter of Laclede Gas Company's 2010-2011 Actual Cost Adjustment Filing |) | <u>Case No. GR-2012-0133</u> |
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STAFF RECOMMENDATION AND RESPONSE TO ORDER DIRECTING FILING

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission"), by and through the undersigned counsel, and in response to the Commission's September 5, 2013 *Order Directing Filing* submits its *Staff Recommendation and Response to Order Directing Filing* to the Commission as set forth herein and in the attached Staff Recommendation Memorandum (which is

incorporated herein by this reference), and in support thereof respectfully states as follows:

1. On August 14, 2013, the Commission issued its *Order Approving Stipulation and Agreement, Granting Waiver, And Approving Cost Allocation Manual* (“Order”) resolving certain issues in Laclede Gas Company (“Laclede” or “Company”) Case Nos. GR-2005-0203, GR-2006-0288, GR-2008-0140, GR-2008-0387, GR-2010-0138, GR-2011-0055, GC-2011-0098 and GR-2012-0133. More specifically, the Order approved a stipulation and agreement which resolved all issues in the complaint case (Case No. GC-2011-0098) and resolved one issue in each of the ACA cases listed (the GR cases). The stipulation and agreement which the Order approved was titled *Unanimous Partial Stipulation and Agreement and Waiver Request and Request for Approval of Cost Allocation Manual*, and was filed on July 16, 2013. This stipulation and agreement had an exemplar tariff sheet attached as Appendix 3.

2. On September 3, 2013, Laclede filed a revised tariff sheet to comply with the Order and the stipulation and agreement. On September 5, 2013, Laclede filed a *Motion To Approve Tariff Filing On Less Than Thirty Days’ Notice And Motion For Expedited Treatment*. The motion seeks an effective date of October 1, 2013 for the revised tariff sheet, which is less than the standard 30-day period but which complies with the Commission’s Order and the stipulation and agreement. On September 5, 2013, the Commission issued an *Order Directing Filing*. This *Staff Recommendation and Response to Order Directing Filing* (including the attached Staff Recommendation Memorandum) is in response to said *Order Directing Filing*.

3. The *Order Directing Filing* ordered Staff to file “a recommendation stating whether there is good cause for the Commission to approve the revised tariff sheet on less than 30 days’ notice and if so, what constitutes such good cause.” Staff submits that there is good cause to approve the revised tariff sheet on less than 30 days’ notice for several reasons.

4. As stated by Laclede in its *Motion to Approve Tariff Filing on Less Than Thirty Days’ Notice and Motion for Expedited Treatment*, approving the tariff sheet to become effective on October 1, 2013, will “assure that the Revised Tariff Sheet complies with the [Stipulation and] Agreement and the Commission order approving it.” Furthermore, approving the tariff sheet to become effective on October 1, 2013 will also eliminate any question about the tariff being retroactive and therefore unlawful, and will accordingly ensure that Laclede’s customers receive the intended benefit of the tariff modification. Such facts constitute good cause and will be discussed further below.

5. The *Unanimous Partial Stipulation and Agreement* had an exemplar tariff sheet attached as Appendix 3. That exemplar tariff sheet had a stated effective date of October 1, 2013. The body of the *Unanimous Partial Stipulation and Agreement* also reflects that the parties intended the tariff sheet to become effective October 1, 2103. For example, paragraph 3 of the *Unanimous Partial Stipulation and Agreement* states in part that “Laclede requests that the Commission approve this Unanimous Partial Stipulation and Agreement no later than September 20, 2013 **so that the specimen tariff sheet set forth in Appendix 3 may become effective for service rendered on and after October 1, 2013.**” (Emphasis added) Also, paragraph 4 states in part that “the Parties agree that such issues shall be considered resolved in each of these cases

with no adjustment to Laclede's ACA balances, provided that: (a) Laclede shall file the tariff modification set forth in Appendix 3 under which the percentage of Off-System Sales/Capacity Release net margins retained by Laclede during its next three fiscal years **beginning October 1, 2013** shall be reduced from 15% to 0% for the first two million dollars in such net margins." (Emphasis added) Furthermore, it should go without saying that the *Unanimous Partial Stipulation and Agreement* was **unanimous**. Therefore, all parties supported the tariff becoming effective October 1, 2013¹ and any other effective date would not be what was "bargained for" by the parties.

6. The Commission's *Order Approving Stipulation and Agreement, Granting Waiver, and Approving Cost Allocation Manual* recognized that "the tariff modification set forth in Appendix 3 to the stipulation and agreement . . . will reduce the percentage of Off-System Sales/Capacity Release net margins retained by Laclede during its next three fiscal years **beginning October 1, 2013** from 15 percent to zero percent for the first two million dollars in such net margins." (Emphasis added) The Order went on to approve the stipulation and agreement, order the parties to comply with its terms, and **order Laclede to issue the tariff sheet set forth in Appendix 3.**² (Emphasis added) Therefore, approving the tariff sheet to become effective on October 1, 2013 will make the tariff sheet comply with the Commission's Order approving the stipulation.

7. The tariff sheet also needs to be approved to become effective on October 1, 2013 to eliminate any question about the tariff being retroactive and therefore unlawful. The tariff sheet itself concerns the sharing, between Laclede and its

¹ See, *In the Matter of Laclede Gas Company's Tariff to Increase Its Annual Revenues for Natural Gas Service*, Case No. GR-2010-0171, Tracking No. YG-2011-0246, *Order Approving Tariff for Low Income Assistance Program*, 2010 WL 4920607 (Mo.P.S.C.) issued on November 23, 2010, where the Commission found good cause to allow a tariff to become effective less than thirty days from its filing date for similar reasons.

² Remember that the tariff sheet in Appendix 3 had a stated effective date of October 1, 2013.

customers, of Off-System Sales margins and Capacity Release revenues. The body of the tariff sheet – in fact, the modification from the old tariff sheet and the “bargained for” change in the tariff sheet – provides that “**From October 1, 2013** through September 30, 2016 the Customers Share and Company Share for this layer of margins and revenues shall be revised to 100% and 0%, respectively.” (Emphasis added) Therefore, if the effective date of the tariff sheet is *after* October 1, 2013, the tariff sheet would appear to be retroactive and therefore unlawful.

8. For example, in *State ex rel. AG Processing, Inc. v. Public Service Commission*, 311 S.W.3d 361, 365 (Mo. App. 2010), the court stated that:

Section 393.140(11) provides that “[n]o corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service **as specified in its schedules filed and in effect at the time.**” (Emphasis in opinion) “The filed rate doctrine . . . precludes a regulated utility from collecting any rates other than those properly filed with the appropriate regulatory agency.” *State ex rel. Associated Natural Gas Co.*, 954 S.W.2d at 531. “This aspect of the filed rate doctrine constitutes a rule against retroactive ratemaking or retroactive rate alteration.” *Id.* Retroactive ratemaking is defined as “the setting of rates which permit a utility to recover past losses **or which require it to refund excess profits** collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established.” *State ex rel. Util. Consumers’ Council of Mo.*, 585 S.W.2d at 59. (Emphasis added)

The court went on to state that “**any adjustment** to the cost of electricity based on electricity that had already been consumed by Aquila customers **prior to the effective date [of the tariff] clearly constitutes retroactive ratemaking.**” *Id.* at 367. (Emphasis added) In that case, the body of the tariff sheets conflicted with the effective date of the tariff sheets, similar to the present situation if Laclede’s revised tariff sheet is not approved to become on October 1, 2013. See also, *AG Processing v. Pub. Serv. Comm’n*, 340 S.W.3d 146, 153 (Mo. App. 2011). Approving the tariff sheet to become

effective on October 1, 2013 will eliminate any question about the tariff being retroactive and therefore unlawful.

9. Furthermore, approving the tariff sheet to become effective on October 1, 2013 will ensure that Laclede's customers receive the intended benefit of the tariff modification. As the Commission recognized in its *Order Approving Stipulation and Agreement, Granting Waiver, and Approving Cost Allocation Manual* "the tariff modification . . . will **reduce the percentage of Off-System Sales/Capacity Release net margins retained by Laclede** during its next three fiscal years beginning October 1, 2013 from 15 percent to zero percent for the first two million dollars in such net margins." (Emphasis added) In other words, the tariff modification will actually increase the customers' share of margins and revenues for the first two million dollars in such net margins by 15% (from 85% to 100%) for that three-year period. This would clearly be beneficial to the customers rather than Laclede. However, if the tariff is not effective until sometime after October 1, 2013 and is therefore found to be retroactive and unenforceable, the customers of Laclede will not receive the intended benefit of the tariff modification. Approving the tariff sheet to become effective on October 1, 2013 will ensure that Laclede's customers receive the intended benefit of the tariff modification.

10. Staff believes that there is good cause for the Commission to approve the revised tariff sheet on less than 30 days' notice – and more specifically that the tariff sheet should be approved to become effective on October 1, 2013. Such good cause is constituted by the following: Approving the revised tariff sheet to become effective on October 1, 2013 will (1) ensure that the tariff complies with the *Unanimous Partial Stipulation and Agreement* and (2) also ensure that it complies with the Commission's

Order approving that stipulation and agreement, and (3) will also eliminate any question about the tariff being retroactive and therefore unlawful, (4) accordingly ensuring that Laclede's customers receive the intended benefit of the tariff modification.

11. As reflected in the attached Staff Recommendation Memorandum, Staff has reviewed the tariff sheet filed by Laclede on September 3, 2013, and is of the opinion that the sheet is in compliance with the Commission's Order *if* it is approved to become effective on October 1, 2013. Staff also recommends approval of Laclede's request for expedited treatment so that it (1) is in compliance with the Commission's Order, (2) is in compliance with the stipulation and agreement, (3) is not retroactive, and (4) ensures that Laclede's customers receive the intended benefit of the tariff modification.

12. Staff has verified that Laclede has filed its annual report and is not delinquent on any assessment. Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

WHEREFORE, Staff recommends that the Commission issue an order approving the following tariff sheet filed by Laclede on September 3, 2013, to become effective on October 1, 2013, and making such further orders as the Commission deems proper:

P.S.C. MO. No. 5 Consolidated
First Revised Sheet No. 28-i, Cancelling Original Sheet No. 28-i

Respectfully submitted,

/s/ Jeffrey A. Keevil

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 17th day of September, 2013.

/s/ Jeffrey A. Keevil

MEMORANDUM

TO: Missouri Public Service Commission Official Case File,
Case Nos. GR-2005-0203, GR-2006-0288, GR-2008-0140, GR-2008-0387, GR-2010-0138, GR-2011-0055, GC-2011-0098 and GR-2012-0133 File No. YG-2014-0110 Laclede Gas Company

FROM: Kim Cox, Energy Unit – Tariff Safety, Economic and Engineering Analysis Department

/s/ Thomas M. Imhoff 9/17/2013
Energy Unit/Date

/s/ Jeff Keevil 9/17/2013
Staff Counsel's Office/Date

SUBJECT: Staff Recommendation to Approve Laclede Gas Company's Tariff Sheet Filed to Comply with the Commission's August 14, 2013 Order in Case Nos. GR-2005-0203, GR-2006-0288, GR-2008-0140, GR-2008-0387, GR-2010-0138, GR-2011-0055, GC-2011-0098 and GR-2012-0133.

DATE: September 17, 2013

On August 14, 2013, the Missouri Public Service Commission ("Commission") issued its *Order Approving Stipulation and Agreement, Granting Waiver, And Approving Cost Allocation Manual* ("Order") resolving certain issues in Laclede Gas Company ("Laclede" or "Company"), Case Nos. GR-2005-0203, GR-2006-0288, GR-2008-0140, GR-2008-0387, GR-2010-0138, GR-2011-0055, GC-2011-0098 and GR-2012-0133. More specifically, the Order approved a stipulation and agreement which resolved all issues in the complaint case (Case No. GC-2011-0098) and resolved one issue in each of the ACA cases listed (the GR cases). The stipulation and agreement which the Order approved was titled *Unanimous Partial Stipulation and Agreement and Waiver Request and Request for Approval of Cost Allocation Manual*, and was filed on July 16, 2013. This stipulation and agreement had an exemplar tariff sheet attached as Appendix 3.

On September 3, 2013, Laclede filed a revised tariff sheet to comply with the Order. On September 5, 2013, Laclede filed a *Motion To Approve Tariff Filing On Less Than Thirty Days' Notice And Motion For Expedited Treatment*. The motion seeks an effective date of October 1, 2013 which is less than the standard 30-day period, but which complies with the Commission's Order and the stipulation and agreement. On September 5, 2013, the Commission issued an *Order Directing Filing*. This recommendation is in response to this *Order Directing Filing*.

The *Order Directing Filing* ordered Staff to file "a recommendation stating whether there is good cause for the Commission to approve the revised tariff sheet on less than 30 days' notice and if so,

OFFICIAL CASE FILE MEMORANDUM

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what constitutes such good cause.” Staff believes that there is good cause to approve the revised tariff sheet on less than 30 days’ notice (specifically, to approve the revised tariff sheet with an effective date of October 1, 2013), and would direct the Commission to the cover pleading accompanying this Staff Recommendation Memorandum for a detailed discussion of such good cause.

The Commission’s Energy Unit Staff (“Staff”) has reviewed the tariff sheet filed by Laclede on September 3, 2013, and is of the opinion that the sheet is in compliance with the Commission’s Order if it is approved to become effective on October 1, 2013. Staff also recommends approval of Laclede’s request for expedited treatment so that it (1) is in compliance with the Commission’s Order, (2) is in compliance with the stipulation and agreement, (3) is not retroactive, and (4) ensures that Laclede’s customers receive the intended benefit of the tariff modification. Therefore, Staff recommends that the tariff sheet filed September 3, 2013, be approved to become effective on October 1, 2013.

P.S.C. MO. No. 5 Consolidated

First Revised Sheet No. 28-i, Cancelling Original Sheet No. 28-i

The Staff has verified that Laclede has filed its annual report and is not delinquent on any assessment. Staff is not aware of any other matter before the Commission that affects or is affected by this filing.

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

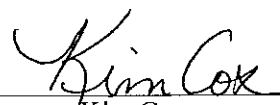
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 In the Matter of Laclede Gas Company's PGA/ACA Tariff Filing)
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 In the Matter of Laclede Gas Company's Annual November PGA/ACA Filing)
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 The Staff of the Missouri Public Service Commission, Complainant, v. Laclede Gas Company, Laclede Energy Resources and The Laclede Group, Respondents)
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 In the Matter of The Laclede Gas Company's Purchased Gas Adjustment Tariff Filing)
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Case Nos. GR-2005-0203, GR-2006-0288, GR-2008-0140, GR-2008-0387, GR-2010-0138, GR-2011-0055, GC-2011-0098 and GR-2012-0133

AFFIDAVIT OF KIM COX

STATE OF MISSOURI)
) ss
 COUNTY OF COLE)

Kim Cox of lawful age, on oath states: that she participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to her; that she has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of her knowledge and belief.



 Kim Cox

Subscribed and sworn to before me this 17th day of September, 2013.



 Notary Public