BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Laclede Gas Company's Tariff To Revise Natural Gas Rate Schedules.	))	**Case No. GR-99-315**

Dissenting Opinion of Commissioner Steve Gaw

I respectfully dissent from the Third Report and Order issued by the majority in the above captioned proceeding. As the majority opinion notes, "a case is moot when a tribunal's decision would not have any practical effect upon any live controversy."[1] The Report and Order continues on to note, "[w]ith respect to utility matters, the general rule is that 'issues under old, superseded tariffs are moot and therefore not subject to consideration.'"[2] Despite its explicit recognition that rates resulting from this proceeding have been replaced by those set in two subsequent proceedings[3], the majority fails to adequately explain how its decision will have any "practical effect upon any live controversy."

In its Report and Order, the majority briefly discuss the concept of mootness.[4] Despite the repeated claims of mootness, the Commission properly recognized that its finding could have a practical, albeit negative, effect on Laclede and thereby could avoid the strict dictates of such a finding. Specifically, the Commission noted that:

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[1] Report and Order at page 18, citing to State ex rel. Reed v. Reardon, 41 S.W.3d 470, 473 (Mo. banc 2001).

[2] Id. citing to State ex rel. Missouri Public Service Co. v. Fraas, 627 S.W.2d 882, 885 (Mo.App. 1981).

[3] Id. at pp. 6-7.

[4] Id. at pp. 18-19.

> the Commission could order different net salvage depreciation rates for the time period in which those rates were in effect. This would allow Laclede to adjust those depreciation reserves upward and adjust its income downward for that period. Thus, Laclede's depreciation reserve accounts would be increased for future ratemaking periods and some practical relief could be awarded to Laclede.[5]

When asked directly whether Laclede truly sought such "practical relief", counsel appeared to waiver. In light of the punitive effect that this adjustment would have on Laclede's past earnings as well as the corresponding reduction to rate base to be used in future proceedings, I specifically asked Laclede counsel whether it would prefer to have the Commission make a mootness finding or to have the Commission issue the suggested practical relief.[6] Given the "rock and a hard place" implication of this question, Laclede's counsel adeptly avoided the question.[7]

In spite of the possible practical relief acknowledged by the majority in its Report and Order, the majority instead opted for accounting manipulations designed solely to attempt to avoid the mootness doctrine while simultaneously alleviating any negative financial implications on Laclede. Specifically, the majority orders a $2.3 million increase in depreciation rates designed to reflect the utilization of the accrual method for treating negative net salvage. In addition, the majority ordered a corresponding $2.3 million debit to depreciation reserve. The accounting manipulations have no practical effect in that the adjustments do not change revenues, expenses, net income, plant-in-service, depreciation reserve or rate base. In addition, the adjustments do not, and of

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[5] Id. at 19.

[6] Tr. at 1316.

[7] Tr. at 1319.

course, should not result in any change to retail rates.[8] Given the lack of "practical relief" granted by the majority, I find that this matter should be deemed moot.

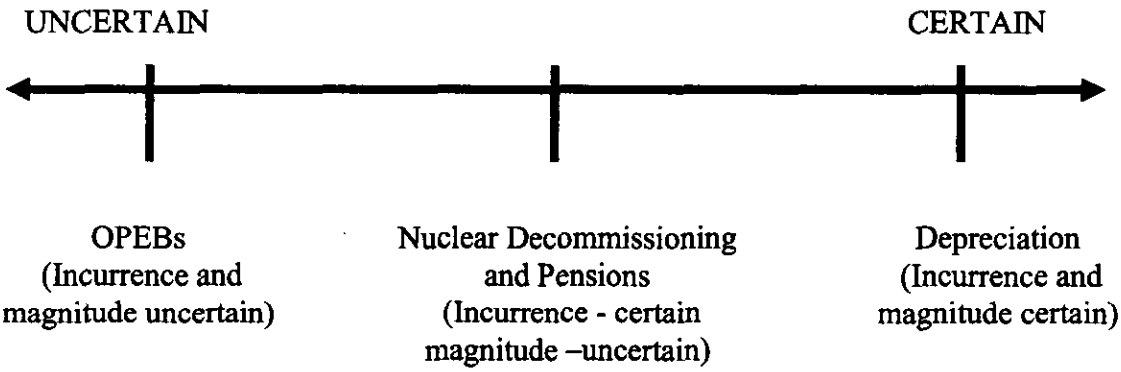
Aside from the bar provided by the mootness doctrine, I harbor reservations regarding the appropriateness of the accrual method of recovering for net salvage. Specifically, I am concerned about the use of estimates to recover costs that are uncertain and that may never actually be incurred. In its testimony, Laclede and AmerenUE note that the Commission routinely uses estimates. In fact, the companies note that the use of estimates is implicit in the calculation of depreciation rates. The difference, however, is that the depreciation rate determination uses estimates to provide for the return of costs that: (1) have already been incurred and (2) are of a certain magnitude. Any lack of accuracy in the estimates used for the calculation of depreciation rates (i.e., average service life) is not further compounded by a concern regarding the magnitude of the cost to be recovered or whether the cost will ever actually be incurred.

In addition to the use of estimates for determining depreciation expense, the companies also direct the Commission's attention to the use of estimates in calculating pensions and nuclear decommissioning. In reality, cost of removal is an advance by ratepayers for an expense which is of an uncertain future magnitude. It is therefore, more like these examples than costs incurred and recovered through depreciation. Nevertheless, while these examples are a better analogy than depreciation, the companies' comparison is again not entirely accurate. Although the actual incurrence of the expense is certain, the ultimate magnitude of the expense is not. In each of these

[8] The Company is undoubtedly aware that it is prohibited, under the bar against retroactive ratemaking, from seeking rate increases to reflect accrual treatment of net salvage for the period in which the rates arising out of this case were in effect.

situations, a legally enforceable obligation has been created by statute which mandates the eventual payment of these costs. Thus, while the Commission may have concerns regarding the use of estimates for determining the magnitude of such costs, it is assured that such expenditures will ultimately be incurred.

In reality, along the spectrum of expense certainty, the recovery for cost of removal is most like the recovery of OPEBs (retirement benefits other than pensions); it is an advance by ratepayers for an uncertain future expenditure of a questionable magnitude.



In the early 1990s, the Commission was confronted with numerous requests to adopt accrual accounting for post-retirement benefits other than pensions. Similar to the situation at hand, the utilities repeatedly noted that: (1) accrual treatment was consistent with GAAP as well as recent Financial Accounting Standards Board pronouncements; (2) the vast majority of other Commissions had adopted accrual treatment; (3) utilization of cash accounting would result in reduced cash flow and (4) disparate treatment by the Missouri Commission would hamper these utilities in accessing the capital markets.

Despite these arguments the Commission repeatedly refused to adopt accrual accounting for OPEBs. Instead, in response to arguments about the uncertainty of the incurrence of such costs, the Commission continued to use the cash method for recovering these expenses.[9]

Given the Commission's persistent refusal to grant recovery of OPEB expenses that are of uncertain magnitude and that may not actually be incurred, the utilities eventually sought redress in the General Assembly. While the legislature mandated the use of accrual accounting for OPEBs, it also sought to prevent a situation where the utility realized a windfall as a result of never actually incurring the expense. Therefore, similar to the funding requirements for pensions and nuclear decommissioning, the legislature required all monies collected to be placed in an external fund and used only for retiree benefits.[10] In fact, the legislature noted that "in no event shall any funds remaining in such funding mechanism revert to the utility."[11]

It is not my intention to predetermine, through this dissent, any decision on my part regarding the appropriate methodology for calculating and recovering net salvage costs. I understand that the accrual method benefits the cash flow of the Company. Here,

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[9] See, In re St. Joseph Light & Power Company, 2 Mo.P.S.C.3d 248 (1993); In re United Telephone Company of Missouri, 2 Mo.P.S.C.3d 403 (1993); In re Missouri-American Water Company, 2 Mo.P.S.C.3d 446 (1993); In re Southwestern Bell Telephone Company, 2 Mo.P.S.C.3d 479 (1993).

[10] See, Section 393.292 regarding the recovery and funding of nuclear decommissioning costs; Section 386.315 regarding the recovery and funding of OPEB costs; and federal ERISA laws regarding the recovery and funding of pension expense. Noticeably, the legislature also deemed it appropriate for the creation of a special fund for the safe keeping of amounts collected through depreciation expense. Section 393.240.2 specifically requires each utility to "set aside the moneys so provided for out of earnings and carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement, as the commission may prescribe. (emphasis added). The rationale behind the utilities' and Commission's evolution away from such "depreciation funds" is unclear.

[11] Section 386.315.2 RSMo.

the Company proposes that ratepayers be required to advance money for removal of assets. The Commission must balance the benefits and risks to the consumer of making the consumer pay such advances. If the accrual method does not adequately provide that balance, other avenues should be utilized that will. This may include using the expense method or following the legislature's lead in requiring that the net salvage be segregated and held in trust. Ratepayer money should be advanced to the Company for possible future expenditures only after the Commission has weighed the accuracy of the estimate of the expenditures, the likelihood of the incurrence of the expenditure and the financial stability and reliability of the Company.

Respectfully submitted,

Steve Gaw
Commissioner

Dated at Jefferson City, Missouri,
on this 18th day of January, 2005.