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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Question and Answer Session

August 13, 2003
Jefferson City, Missouri
Volume 5

In the Matter of the Tariff)
Filing of Laclede Gas Company) Case No.: GT-2003-0032

LEWIS MILLS, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

CONNIE MURRAY,
STEVE GAW,
BRYAN FORBIS,
ROBERT CLAYTON,
COMMISSIONERS.

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1 P R O C E E D I N G S

2 JUDGE MILLS: Let's go on the record.

3 We're on the record for a question and answer
4 session in Case No. GT-2003-0032, which is styled In
5 the Matter of the Tariff Filing of Laclede Gas Company.

6 We'll begin by taking entries of appearance
7 starting with Staff, then Public Counsel and then the
8 Company and then the schools.

9 MR. FRANSON: Robert Franson, appearing on
10 behalf of the Staff of the Missouri Public Service
11 Commission.

12 JUDGE MILLS: Thank you.

13 MR. MICHEEL: Douglas E. Micheel, appearing on
14 behalf of the Office of the Public Counsel and the
15 Public.

16 MR. ZUCKER: Rick Zucker and Michael C.
17 Pendergast, appearing on behalf of Laclede Gas Company.

18 MR. BROWNLEE: Richard Brownlee, appearing on
19 behalf of the Missouri School Boards Association.

20 JUDGE MILLS: Thank you.

21 Let's -- we'll do opening statements in the
22 order we discussed off the record; that is, Laclede,
23 then the School Boards, then Staff and/or Public
24 Counsel, depending on how you all have agreed on which
25 order you two will go in.

1 So, Mr. Zucker, if you could come up to the
2 podium, please.

3 MR. ZUCKER: If it please the Commission. I'd
4 like to give you a little background to start with.
5 We're here today to address whether the Commission
6 should approve or reject or suspend the tariff we filed
7 on July 25th.

8 The purpose of our tariff was to implement the
9 Company's agreement with the schools on how pipeline
10 capacity costs should be treated under the Company's
11 experimental school aggregation program.

12 Such agreements are explicitly authorized by
13 the terms of a recent amendment to the school
14 aggregation statute. Under that amendment, schools
15 participating in the program are to be treated just
16 like Laclede's basic transportation customers with
17 respect to pipeline capacity costs, unless some
18 alternative arrangement is otherwise agreed to by the
19 schools and the utility.

20 In reaching an agreement with the schools,
21 Laclede was guided by the same principles that have
22 shaped its actions since the issue of allowing school
23 aggregation was first approached last year in the
24 General Assembly.

25 One of the most important principles that

1 Laclede has adhered to throughout this process is the
2 concept that an experimental program like this should
3 be performed in a way that prevents or at least
4 minimizes potential harm to both Laclede's customers
5 and the Company itself.

6 In fact, no one has made more of an effort
7 than Laclede to help non-participating customers avoid
8 financial harm. Although Laclede did not support the
9 original school aggregation statute passed last year,
10 it worked hard to have language included that prevented
11 a negative financial impact on customers, the utility
12 and the local taxing authorities.

13 Once the statute passed and became law,
14 Laclede consistently pursued tariff terms under which
15 participating schools would be obligated to pay for the
16 capacity costs that Laclede had reserved for them so
17 that no other customers would have to pick up these
18 costs.

19 Indeed as the schools themselves acknowledged,
20 Laclede's rigid adherence to that principle was the
21 main reason why we weren't able to reach an agreement
22 on this issue last fall when the program was first
23 approved or in April when we brought this issue before
24 you again.

25 In that April hearing Laclede submitted a

1 tariff that required the schools to pay for capacity in
2 an amount equal to 150 percent of their peak monthly
3 usage for the five months of November through March,
4 and 88 percent of that peak monthly usage for the
5 seven months of April through October.

6 These amounts in the aggregate represented our
7 best estimate of how much capacity had been reserved
8 for the schools. And apparently the Staff and Public
9 Counsel agreed with that conclusion, as evidenced by
10 their support of the Company's proposal at the
11 April 2003 hearing.

12 However, before that case could be completed,
13 the school aggregation statute was amended specifically
14 to address the pipeline capacity issue. As a result,
15 Laclede was now faced with the new statutory provisions
16 that said that unless otherwise agreed upon, the
17 Company could not charge the schools for pipeline
18 capacity for a longer period of time than it charges
19 basic transportation customers for such capacity.

20 In fact, the legislation requires that
21 utilities treat the schools in exactly the same way as
22 they treat basic transportation customers when it comes
23 to such capacity costs, and further provides that doing
24 so will not be considered a financial detriment to the
25 utility or its customers.

1 Now, passage of this amendment undercut
2 Laclede's ability as well as the Commission's ability
3 to require schools to pay for their capacity costs.

4 Since basic transportation customers are not
5 obligated to purchase any pipeline capacity from the
6 Company, the amendment created the possibility that
7 Laclede and its customers could lose all of the
8 contribution that the schools have traditionally made
9 to cover these costs.

10 In other words, if the schools managed to line
11 up pipeline capacity from some other source, they would
12 be free to walk away from Laclede's capacity in its
13 entirety and leave Laclede's other customers to pick up
14 the entire cost.

15 In addition, since Laclede currently retains
16 between rate cases all of the revenues it receives when
17 it releases pipeline capacity, the law also created a
18 potential circumstance where Laclede would not be
19 required to flow through capacity release revenues it
20 may receive from the schools.

21 Given these newly enacted provisions, Laclede
22 could have simply filed a tariff that removed the
23 schools' obligations to pay for the capacity costs and
24 let the chips fall where they may.

25 Instead the Company worked hard to negotiate

1 an agreement in which the schools' ultimately consented
2 to purchase 80 percent or 4/5ths of the capacity they
3 would have been responsible for under the Company's
4 tariff proposal -- proposal last April.

5 Now, we all realize that 80 percent is not as
6 good as 100 percent, but it's a heck of a lot better
7 than 0 percent, which was the schools' position even
8 prior to the change in the statute at the hearing in
9 April.

10 In addition, the Company went one step further
11 and maintained a tariff provision that required Laclede
12 to flow these contributions to its customers through
13 the PGA so that non-participating customers would
14 receive the benefit of the Company's efforts.

15 In exchange for these efforts and the
16 Company's willingness to contribute the revenue from
17 the 80 percent of the pipeline capacity released to the
18 schools, Laclede's benefit under this agreement is that
19 it not be required to absorb the cost of any remaining
20 capacity formerly reserved for the schools.

21 Now, Staff has raised a number of objections
22 to the tariff. And we have addressed these objections
23 in a pleading filed on August 1st, and in another
24 pleading that we filed yesterday.

25 Some of these objections concern portions of

1 the tariff that were approved by the Commission last
2 fall and are not at issue here. Other objections are
3 based on a mistaken analysis of the Company's capacity
4 calculations, which we addressed in yesterday's filing.

5 Both Staff and Public Counsel have also
6 indicated that they oppose the tariff on the grounds
7 that the provision that says -- that Laclede shall not
8 absorb unused capacity constitutes some impermissible
9 form of pre-approval.

10 In fact, all that Laclede has requested is
11 that -- is that the Commission do what it has
12 consistently done whenever it has authorized an
13 experimental program. And that is to establish all of
14 the ground rules for the program up front.

15 Accordingly, Laclede has joined the schools in
16 asking that the Commission make an up-front
17 determination that on balance the agreed-upon terms of
18 this experiment, as reflected in Laclede's tariff, are
19 appropriate and will be the parameters that will
20 actually govern the experiment.

21 This includes an up-front determination that
22 it is appropriate and reasonable for the schools to pay
23 for 80 percent of their capacity costs during this
24 experiment, for Laclede to flow through those payments
25 to its other customers and, finally, for Laclede to not

1 be required to absorb the costs of any remaining
2 capacity formerly reserved for the schools.

3 The schools have explained at length their
4 need for expedited action. According to the schools,
5 suspending the tariff for any appreciable time will
6 have the same effect as rejecting it.

7 And so it is in your hands now to determine
8 whether the agreement represented by the tariff is
9 appropriate and reasonable.

10 Laclede believes that under the circumstances
11 created by the amendment to the school aggregation
12 statute the tariff is appropriate and reasonable for
13 all parties; that is, the schools, the other customers
14 and Laclede.

15 The schools will be relieved of paying for a
16 small portion of their capacity costs, but will still
17 pay for the large majority of those costs.

18 Other customers will not receive contributions
19 necessary to cover all of the schools' capacity costs,
20 but will receive contributions covering the vast
21 majority of these costs.

22 And, finally, Laclede will not receive the
23 capacity release revenues to which it otherwise would
24 have been entitled, but it will receive assurances that
25 the entire financial basis for the agreement will not

1 be retroactively changed, based on some future party's
2 future claim that a different or better agreement
3 should have been struck.

4 Simply put, like any other experimental
5 program that has been approved by the Commission, these
6 determinations should be made and these parameters
7 should be set before the experiment begins, rather than
8 long after it's ended.

9 If you agree that the tariff is appropriate
10 and reasonable, as we believe it is, then you should
11 approve it. If you do not agree, then you must either
12 reject or suspend the tariff -- an outcome that would
13 result in either no program for the 2003/2004 period or
14 a program in which no contribution for capacity costs
15 is guaranteed for customers.

16 Whatever decision you come to, based on the
17 expressed needs of the schools, we only ask that you
18 issue the decision promptly.

19 Thank you for your time and your attention
20 today.

21 JUDGE MILLS: Thank you.

22 Mr. Brownlee?

23 MR. BROWNLEE: Good morning. My name is
24 Richard Brownlee. I represent the Missouri School
25 Boards Association, which just as a matter of history

1 for you is approximately 393 school districts, over
2 2,000 schools.

3 In the Laclede service area that's the subject
4 really of the remaining tariff on the -- on this whole
5 program we've had 19 school -- or 19 districts sign up
6 preliminarily, of course, subject to the approval of
7 this tariff. We've had inquiries for 13 more. Right
8 now signed up there are over 300,000 children in
9 St. Louis that will benefit from this program.

10 Procedurally why the August 15th date is
11 important I might just review for you again. Once the
12 schools know what the tariff proposal will be, there
13 has to be public notice, there has to be a school board
14 meeting, they have to vote on the participation
15 agreement.

16 Then that school goes back to Laclede, they
17 have to determine historic usage for the school. Then
18 once that's done, Laclede then has to compute the
19 capacity decisions, and then our agent has to go out
20 and purchase the gas.

21 It is -- we are at a critical time factor
22 here. I mean, the session is over in about three or
23 four days for this program to work in St. Louis.

24 I think in this particular case it's important
25 for you all to understand this is not something that

1 Laclede and the school boards have thought up. This is
2 a legislative mandate as to how the capacity is to be
3 treated.

4 Two years ago when it was first program -- it
5 was a three-year experimental program that some of you
6 who had been at the -- at the Capitol a time I think
7 would remember.

8 There was a glitch in terms of the capacity in
9 Laclede, for whatever reasons raised that, and we in
10 the last session went in and cured by -- with an
11 amendment on this particular issue that's in front of
12 you all now -- how the capacity would be treated.

13 This is -- again, it is a legislative mandate
14 that this program go into effect. I haven't looked at
15 the legal ramifications of suspending it. But the
16 practical application is if the tariff is suspended or
17 disapproved, the legislative mandate is being ignored.

18 You have to remember, too -- and I think this
19 is important and -- and I -- in deference to reading
20 the Staff's objection and to the Public Counsel's
21 objection, this is an experiment.

22 It is not designed to create precedential
23 procedure for the history of the world or Laclede's
24 future history. It is a three-year program.

25 And as such, I think the Commission in those

1 cases needs to look at this with a different view. The
2 tariff is reasonable. It's justified. It has
3 advantages probably that go way beyond even what the
4 Legislature mandated in terms of capacity, which I
5 think Mr. Zucker covered carefully -- the 80 percent
6 that the schools agreed.

7 That benefit flows to other customers that --
8 if we were an industrial or were a commercial customer,
9 like the statute says, would not occur. So through the
10 negotiations the school boards and La-- Laclede have
11 really created advantage that goes beyond the absolute
12 mandates that the Legislature set.

13 But it is an experiment. It's gonna end. And
14 I don't think I can emphasize enough how important this
15 is.

16 Today the front page of the business section
17 of the Post-Dispatch has an article about the
18 Laclede -- they've had to -- I mean, school systems in
19 St. Louis have had to hire special administrators.

20 They got their first month bill. 790 mil-- or
21 thousand dollars. I think in the last two days, there
22 was another article in the Post-Dispatch on the rising
23 natural gas prices and shortages that are gonna be
24 around this winter for us, which again, I know you all
25 will get to hear about until you're probably sick of

1 it.

2 The need is so obvious and apparent, and this
3 is before the legislative problems with budget
4 occurred. I mean, this is -- this is worse than what
5 we had expected.

6 What I'd like to do is to ask the Commission
7 to view this as what the art of the possible is. It is
8 easy to find problems probably with any tariff that's
9 ever filed. They are -- none are perfect.

10 But the art of the possible is what needs to
11 be done for the children in the St. Louis school system
12 to give them the benefits that are occurring in other
13 major metropolitan areas in the state.

14 There is a -- a possible here. And I think
15 one of the solutions that if the Public Counsel and
16 Staff are concerned is I think in an order approving
17 the tariff, the Commission could articulate the fact
18 that it is experimental.

19 You can articulate the fact that it's unique
20 for this experimental program -- some of the concepts
21 herein. You could articulate that it is not to be
22 viewed as a precedent in future Laclede or other gas
23 rate case proceedings.

24 There's ways to protect the experimental
25 nature and approve the tariff without having it be a

1 precedent for all time future rate cases, no matter
2 whether they're Laclede or any other company.

3 There's ways to do this. And the only thing I
4 urge is that the Commission act expediently, because
5 I -- I'm not here crying wolf. If this isn't done,
6 this program is over. I mean, it will not occur. It
7 just physically cannot happen.

8 So with that having said, I hope -- I
9 appreciate your help and concern. And maybe later if I
10 can answer any questions, I will.

11 Thank you.

12 JUDGE MILLS: Thank you.

13 Mr. Franson?

14 MR. FRANSON: Thank you, Your Honor.

15 Good morning. May it please the Commission,
16 Judge. What we're here about is a program that started
17 a year ago, and all issues were settled except for
18 capacity -- pipeline capacity costs.

19 We had a hearing. We had a couple of
20 post-hearing conferences. And that was all what was
21 the effect of this new law. Well, the old part of the
22 case is moot. We're here under the new law.

23 There's a couple of things that need to
24 go -- we need to go into very briefly. No. 1 is the
25 statute. What does it require? The statute's pretty

1 well set out in the pleadings, particularly by Staff.

2 But what has happened is there is a new
3 statute that covers the question of pipeline capacity.
4 And essentially it ta-- it says, if their costs are not
5 a financial detriment -- and it explains that the --
6 they're not considered by the Commission to be a
7 financial detriment -- but if there are, in fact, costs
8 that the schools are walk-- are able to walk away from
9 by being treated for -- as basic transportation
10 customers, then what happens to it?

11 Staff believes there are, in fact, costs here.
12 Something happens to them. The -- under the initial
13 tariff that was filed there was review contemplated.
14 Laclede did not object to an audit and adjustments.

15 Now, under that situation Laclede was
16 protected by the statute as were the other customers
17 from financial detriment. That is no longer the case.

18 The agreement here passes that 20 percent that
19 has been identified at -- on to the other customers;
20 that is, all residential customers, including
21 low-income customers.

22 Now, what Staff has -- if I may approach, Your
23 Honor, what I have done is I've taken the couple of
24 paragraphs out of the tariff, Section E. G happened to
25 be on here. There's not any changes in G.

1 But in Section E and J -- E and J, I -- what
2 I've done is I've boded the new language, and I have
3 put in italics the old language.

4 And if I may approach, and then share it with
5 the other parties.

6 JUDGE MILLS: You may.

7 MR. FRANSON: Judge Mills indicated to get
8 right to the point. Staff really has some questions in
9 our pleading about what happens in Section E, whether
10 it is, in fact, 80 percent; however, that's not what
11 I'm going to concentrate on.

12 In Paragraph G -- or I'm sorry Paragraph J,
13 the part that Staff is objecting to provided further
14 that the Company -- and it's in quotes -- shall not be
15 required to absorb the costs of any pipeline capacity
16 formerly reserved to satisfy the requirements of the
17 ESE's prior to the onset of the prob-- of the program.

18 ESE stands for eligible school entities.
19 That's a re-- reference to any schools that might
20 participate.

21 If that language was not there, there would
22 not be pre-approval. That would mean that the
23 Commission in a future Laclede ACA would have a full
24 audit as contemplated in Paragraph J. All of the
25 information would be known.

1 The schools are protected by the statute. And
2 what Laclede has done by this agreement is insulated
3 itself completely, but it has not done anything to
4 insulate its customers.

5 The fact is that up above it was already
6 contemplated and there was no change that these
7 revenues were not going to be considered pipe --
8 capacity revenues; in other words, they were not going
9 to be considered.

10 This is a separate program. It stands by
11 itself. These revenues were never intended to go
12 through Laclede. Their last rate case, this wasn't
13 even an issue. It hadn't been gone through yet.

14 So the bottom line is Laclede is trying to do
15 by the tariffs what they could not do in the statute,
16 and they are insulating themselves. And that's
17 certainly fine for them to advocate that position, but
18 it needs to be clear exactly what we're being presented
19 with.

20 If there are any costs that are not covered by
21 the schools under this agreement that is being put
22 forth here, which cannot go into affect without
23 Commission approval, then it is the other customers and
24 only the other customers that pick it up.

25 No one can identify the amount of those costs

1 at this point in time. It -- nobody knows. Laclede
2 informed Staff they couldn't break them out under how
3 it's done with their current -- under the current way
4 they have things split out in their rates and in how
5 they're structured.

6 However, all of the capacity costs will be
7 readily available once certain schools sign up if this
8 come -- if the Commission approves this tariff.

9 And -- but then and only then at the end when
10 there's an audit of this, could the Commission be in a
11 position to say it is reasonable -- these costs are
12 reasonable.

13 And what Laclede does by having pre-approval,
14 not only do they insulate themselves from the cost, but
15 they also insulate themselves from any prudence review.
16 And that is where Staff is having a problem with this.

17 Now, Staff has some other concerns about the
18 tariff that are set out in our pleading, and don't
19 really want to go into those. But there's also -- very
20 important to note that what we're talking -- while
21 we're talking about an experimental program, we are
22 talking about in the record from the earlier ti-- in
23 this hearing, which is still -- in this case, which is
24 still part of it, Mr. Irvin testified on behalf of the
25 schools.

1 Mr. Irvin's view of this was very different
2 than this just being a one-time shot only for schools.
3 What Mr. Irvin testified to was that this was the
4 beginning, and his vision was that this program would
5 include small commercial customers, whether that was
6 barbershops or restaurants or whatever it might be.

7 So he certainly has greater visions for this
8 program -- at least he did at that time. Now, he may
9 have changed it, based on what Mr. Brownlee said today.
10 But his testimony is still on the record in that -- or
11 it was.

12 What we've got here is a program that is
13 legislatively mandated, but it's still up to this
14 Commission to find that it complies with the statute,
15 and that it is implemented in a way that is also good
16 policy.

17 The problem is for -- for Laclede to get the
18 ability to have absolutely no review is -- Staff
19 submits not good policy and is very troubling.

20 There is a case -- it was cited in the Staff
21 rack. It's GO-2000-394, in the matter of Laclede Gas
22 Company's experimental tri-stabilization fund, another
23 experimental program.

24 In the Commission's Order dated March 22nd,
25 2001, Commission said specifically, the Commission is

1 unwilling to approve a tariff provision that purports
2 the -- to preclude the Commission from ever reviewing
3 this matter in a future actual cost adjustment
4 proceeding.

5 That is the exact effect of the offending
6 language in Paragraph J. What it would do is preclude
7 this Commission from ever reviewing the prudence of
8 Laclede's actions or ever assessing costs of whether
9 Laclede should bear any of those.

10 That is the exact effect of what
11 Paragraph J would do -- the language that's been set
12 out. And that is why Staff objects to the pre-approval
13 in Paragraph J.

14 And you can -- you can have all the
15 experiments you want, you can have all of the language,
16 but if the door is open for pre-approval, even a little
17 bit, and it's not the right time for pre-approval --
18 there may be a right time for pre-approval. This is
19 not it.

20 This initial tariff that was filed
21 contemplated Commission audit, Commission review --
22 Staff audit and Commission review of that.

23 And Laclede would have certainly had any input
24 they wanted into that, they're trying to preclude that
25 entry. And for that primary reason Staff has

1 recommended that this either be suspended or rejected.

2 An alternative would be to reject it and
3 suggest that Laclede could refile it without that
4 language in it. That would be another option.

5 That would conclude my opening. Staff is here
6 for any questions that the Commission might have at the
7 appropriate time.

8 Thank you.

9 JUDGE MILLS: Thank you, Mr. Franson.

10 Mr. Micheel?

11 MR. MICHEEL: Thank you. May it please the
12 Commission. Public Counsel's concerns are limited to
13 the issue of pre-approval in Section J. And what this
14 Commission has to do today is make a policy decision as
15 the first thing.

16 And that policy decision is, does this
17 Commission want to allow pre-approval of gas costs and
18 exclude those from any ACA policy review? If the
19 Commission wants do that, their inquiry may be done.
20 And -- and that's a decision for you.

21 However, I would point out that I don't
22 believe via the statute the Commission is allowed to do
23 that. And -- and -- and let me explain.

24 As -- as Mr. Zucker pointed out, and I believe
25 Mr. Brownlee pointed out, that the school districts

1 cannot be treated any differently than basic
2 transportation customers. And the new amendment to
3 Section 393-310.6 says, the Commission shall treat the
4 gas corporation's pipeline capacity costs for
5 associated eligible entities in the same manner as for
6 large industrial or commercial basic transportation
7 customers.

8 It's my understanding right now if you have a
9 large customer and they qualify for transportation
10 service and they decide that they're leaving the
11 system, prior to leaving the system, Laclede Gas
12 Company had to have some capacity to serve those
13 customers.

14 All right. Those customers qualify for
15 transportation, they leave the system. That leaves a
16 void in that capacity. Now, it's my understanding the
17 way we treat that now is Laclede is going to come in in
18 an ACA proceeding and they're going to say, hey, we've
19 got some stranded capacity here.

20 We used to have a large industrial customer
21 that -- that owned that capacity. They're gone now;
22 therefore, we have less filling in the pie, and so
23 you're gonna have to shift those costs.

24 I mean, we needed it at the time. And in the
25 ACA proceeding they're gonna make that argument. We're

1 going to review it, the Staff is going to review it.
2 If there's a dispute, you folks are gonna hear evidence
3 about it. And based on that evidence, you're going to
4 be able to make a decision.

5 I believe that the statute clearly requires
6 you to strip out the offending sentence in
7 Subsection J of the tariff that Mr. Franson gave you,
8 and he's -- he's highlighted it -- that -- that there.

9 And the reason I believe that is because
10 Subsection 6 of that statute does not give you a
11 choice. It says, the Commission shall treat the gas
12 corporation's pipeline costs for associated in the same
13 manner for large industrial or commercial basic
14 transportation customers.

15 And this Commission does not pre-approve right
16 now that recovery. And so I see it on -- as -- as a
17 two-pronged thing.

18 First of all, I think it's poor public policy
19 to pre-approve recovery. Secondly, I think the statute
20 explicitly prevents this Commission from approving
21 pre-appro-- pre-approved recovery, because you are
22 required by the Legislature to treat that capacity as
23 you would for a large customer that left the system.
24 And that's not pre-approved recovery rite now.

25 A couple points that Laclede brought up. They

1 said the statute does not require Laclede -- or Laclede
2 should not be required to absorb the cost. First of
3 all, by stripping out the pre-approval language, that
4 does not -- does not require Laclede Gas Company to
5 absorb those costs.

6 What it requires is Laclede Gas Company to
7 come before this Commission in the actual cost
8 adjustment proceeding and say, look, we have some costs
9 here that are unrecovered because of this statute.

10 And we think we did everything in our ability
11 to, you know, get enough cooperation from the
12 companies, and we did prudent things and we'd like
13 recovery. And that's the appropriate time for this
14 Commission to make that decision.

15 And by doing that and by leaving that question
16 open, you're not requiring Laclede Gas Company to
17 absorb any costs. You're saying, we're going to make
18 that decision in a different forum. And I believe the
19 appropriate forum -- the actual cost adjustment forum,
20 that's the structure that this Commission has set up
21 for recovery of gas companies.

22 I mean, that's just the way it is.
23 Mr. Brownlee talked about the art of the possible,
24 and -- and -- and I agree with him. This should be the
25 art of the possible. And -- and the Office of the

1 Public Counsel generally, as it said in its pleading,
2 supports this program. It's the pre-approval.

3 This program can go forward. What this
4 Commission should do, I believe, is reject the -- this
5 tariff filing and say to Laclede, if you file a tariff
6 exactly identical with the exception of excising the
7 offending language in Subsection J, we will approve it
8 as quickly as possible at the next possible agenda
9 meeting or have an emergency agenda meeting.

10 And if that happens, the Office of the Public
11 Counsel will tell you, here, we will wholeheartedly
12 support this program. And in general, you know, it's
13 prescribed by the Legislature. We support
14 the program. I mean, the Legislature made the
15 decision.

16 However, I think the tariff as filed has bad
17 policy -- bad public policy, and I don't think it's
18 consistent with what the statute says. So I would ask
19 you to reject the tariff that's filed and order Laclede
20 to file a tariff consistent with no pre-approval.

21 JUDGE MILLS: Thank you, Mr. Micheel.

22 We will -- we're gonna do Commissioner
23 questions. And the Commissioners may have questions
24 for any one of the attorneys in any particular order or
25 for witnesses here for the various parties.

1 Commissioner Murray?

2 COMMISSIONER MURRAY: Thank you.

3 Mr. Franson, you just heard Mr. Micheel give
4 OPC's position as to rejecting the current tariff and
5 directing Laclede to file another tariff excising the
6 language to which they object in Subsection J.

7 What would Staff's position be on a tariff
8 that read that way?

9 MR. FRANSON: Well, Commissioner Murray -- if
10 I may step up here, Judge?

11 JUDGE MILLS: Please.

12 MR. FRANSON: And just -- just so that the --
13 the video transcription is -- is clear, if -- if your
14 answer is gonna be more than a word or two, please do
15 come forward to the podium.

16 MR. FRANSON: Commissioner Murray, I think
17 what we've got is an inartfully worded statute. It can
18 be read the way Mr. Micheel does; however, if you read
19 it that way, it would tend to completely negate a
20 first -- the first part of that.

21 Paragraph 5 says, as may be mutually -- except
22 as may be mutually agreed by the gas corporation and
23 eligible school entities and approved by Commission,
24 such tariffs -- then it spells out what it shall do.

25 It seems to allow in Paragraph 5 two options.

1 Either the schools' capacity -- pipeline capacity costs
2 are treated as basic transportation or the schools and
3 the particular gas company, in this case Laclede, can
4 agree otherwise.

5 If they agree otherwise, then that agreement
6 by definition may treat it differently than
7 Paragraph 6. Paragraph 6 also contains a mandate to
8 the Commission. But to harmonize this statute and give
9 it any effect, it would appear you have to consider
10 two options.

11 If you read it that the -- that the gas
12 company and the schools can agree on something, and
13 that -- and that's okay if it's approved by the
14 Commission -- but the schools and the gas company agree
15 on something different than treating pipeline capacity
16 costs as basic transportation the way they're treated
17 there -- if you read it that way, then you -- you
18 can't -- then that negates the ability of the schools
19 and the gas company to agree.

20 So what I'm suggesting -- and I'm sorry,
21 Commissioner Murray, if you had another question right
22 now. What I -- what I'm suggesting is that there's
23 two possibilities here; that is, the schools and the
24 gas company agree, like they have here, and that's
25 approved by the Commission.

1 And even though that is by definition going to
2 be contrary to Paragraph 6, it has to be read that way,
3 otherwise then they can only be treated as basic
4 transportation.

5 So I -- I think you -- you have two options.
6 And the schools and Laclede are saying, we want to do
7 it this way. And that will work if the Commission
8 approves it.

9 But if you read it that they have to be -- do
10 it as basic transportation, then that defeats the
11 except clause. So I -- I think you've got to read it
12 so that you give that op-- the Commission the option of
13 approving that.

14 So I'm suggesting it can be read Mr. Micheel's
15 way, but that's not the best way to do it. It would
16 defeat the purpose of the statute.

17 COMMISSIONER MURRAY: All right. So,
18 Mr. Franson, you're saying then that the agreement that
19 is -- that has been reached and the tariff that has
20 been filed is not contrary to the statutory language?

21 MR. FRANSON: I think --

22 COMMISSIONER MURRAY: It's contrary to your
23 policy, but -- policy direction that Staff wants to go,
24 but not to the statutory language; is that right?

25 MR. FRANSON: That would be Staff's position.

1 And again, the reason is that says, except as mutually
2 agreed. Staff reads that to include Paragraphs 5 and
3 6.

4 If you read it any other way, then the only
5 thing that they could do would be the basic
6 transportation. And by definition this agreement does
7 not comply.

8 And in statutory construction you don't want
9 to start out with the idea of defeating the entire
10 purpose of the statutes when there is a plain meaning
11 way to read it.

12 COMMISSIONER MURRAY: All right. And then on
13 Paragraph 6 in the statute if the pipeline capacity for
14 the associated eligible school and these were -- were
15 treated in the same manner as for large industrial or
16 commercial basic transportation customers -- as I read
17 that statute, it says, which shall not be considered a
18 negative financial impact on the gas corporation, which
19 I think sounds to me as if there were not an agreement
20 reached and this capacity were treated in the same
21 manner as for large industrial or commercial basic
22 transportation customers -- that in itself would not be
23 considered a negative financial impact on either the
24 gas corporation, its customers or local taxing
25 authorities.

1 Do you read that --

2 MR. FRANSON: Well, I think what Paragraph 6
3 focuses on when it's read in conjunction with
4 Paragraph 5 is if there are pipeline capacity costs,
5 the schools and only the schools are insulated from
6 those.

7 So if there's \$5 in pipeline capacity costs
8 and the schools can -- the schools walk away from it.
9 And those got to be absorbed by somebody.

10 It's not saying they don't exist. It's just
11 saying that it's not a financial im-- it's not a
12 negative financial impact.

13 So if it was identified that there were costs,
14 somebody is gonna ultimately absorb them.

15 COMMISSIONER MURRAY: But that would be done
16 in the same way as -- as it's done now for large
17 industrial or commercial basic transportation
18 customers, would it not?

19 MR. FRANSON: That would ultimately be done
20 that way. However, under the agreement between the
21 schools and Laclede --

22 COMMISSIONER MURRAY: I'm saying without an
23 agreement.

24 MR. FRANSON: Okay.

25 COMMISSIONER MURRAY: We're going under

1 Paragraph 6.

2 MR. FRANSON: Yes, it would. And without an
3 agreement we've got basic transportation. If -- if
4 that -- if there's expenses there attributable to
5 pipeline capacity, someone's got to pick them up.

6 Laclede would have to come in and -- just as
7 Mr. Micheel explained -- and would have to say we acted
8 prudently and we would like for the Commission to not
9 make us absorb these costs.

10 If the offending language is taken out of
11 Paragraph J of the tariff, we would have the exact same
12 situation. Laclede would be in here explaining, and
13 then the Commission could make an informed decision.

14 But either way there's some costs that would
15 have to be picked up.

16 COMMISSIONER MURRAY: But has -- as proceeded
17 here so far the school districts and Laclede have
18 reached an agreement under Paragraph 5 of the statute
19 to be treated in a way that -- that they've mutually
20 agreed so that the eligible school districts have
21 agreed to pay for 80 percent of the capacity reserved
22 to them; is that correct?

23 MR. FRANSON: That's what Laclede and the
24 schools put forth in their -- in support of their
25 tariff, yes, Commissioner Murray.

1 COMMISSIONER MURRAY: Do you not consider that
2 the cust-- the other customers would be better off
3 under this agreement than if we were going with --
4 strictly with Paragraph 6 of the statute and treating
5 them exactly as other -- as for other large industrial
6 or commercial basic transportation customers?

7 MR. FRANSON: The proposal as it is here
8 leaves customers worse off. And the reason is -- is
9 very basic.

10 Under this agreement put forth by Laclede and
11 the schools co-- costs are going to be identified by an
12 audit. Laclede doesn't pay any of them. So it's only
13 the other customers. If they were treated as tra-- as
14 basic transportation and Laclede comes in, they're not
15 insulated.

16 The Commission would make an informed decision
17 and would have two possibilities. So absolutely
18 customers under this agreement are worse off. Because
19 if there are any costs, they absorb them exclusively.

20 Now, if you look at the schools paying
21 80 percent, they -- the customers could be better off,
22 but not necessarily. It depends on the numbers.

23 If the -- the schools have agreed to pay what
24 is represented as 80 percent versus zero. Well, those
25 costs, again, would have to be absorbed by somebody.

1 And so dollarwise it's possible that customers
2 would be worse off the other way treating as basic
3 transportation. But this way they're completely at
4 risk for -- Staff would not necessarily agree that it's
5 80 percent, but we'll say 80 percent.

6 The customers absorb it all. So I -- I'm not
7 absolutely sure that they would be better off the other
8 way. It -- have I answered your que-- question,
9 Commissioner? Have I --

10 COMMISSIONER MURRAY: I think so, but I may
11 have a couple of other questions for you.

12 MR. FRANSON: Yes, ma'am.

13 COMMISSIONER MURRAY: And just to follow up on
14 that, your position is that the other customers may pay
15 more under this agreement than they would without an
16 agreement between the school boards and -- and Laclede?

17 MR. FRANSON: In -- in theory when you look at
18 they're insulated from 80 percent, you would think not;
19 however, the way this is done with Laclede being
20 totally insulated and having pre-approval -- if Laclede
21 in some way acted imprudently, then in that situation
22 it would be appropriate for Laclede to absorb costs.

23 And -- and if you're talking straight numbers,
24 it is quite probable that the customers would be better
25 off with the agreement on a straight numbers. But it's

1 also possible that there could be the -- if there was
2 some imprudence, there could be -- they could be
3 protected a little more.

4 But I guess the bottom line is numberwise
5 maybe this program is a good idea in -- in the sense,
6 but policywise Staff submits it's a bad idea.

7 COMMISSIONER MURRAY: And what would some of
8 the potential imprudence be? Give me an example.

9 MR. FRANSON: Well, that talks about the
10 entire administration of the program. And any costs
11 that Laclede would -- would have and they would have no
12 incentive to be -- to act as conservative as possible,
13 which they do when they're subject to prudence review.

14 I would probably have to defer to either
15 Mr. Imhoff or Mr. Sommerer for an overview of the
16 process and possible things they could do wrong. And
17 I --

18 COMMISSIONER MURRAY: Let me stop you there
19 and ask you, the language that Staff is objecting to
20 in -- in J says that the company shall not be required
21 to absorb the costs of any pipeline capacity formerly
22 reserved to satisfy the requirements of the ESEs.

23 That -- I don't see that as going beyond
24 any -- limiting them to anything other than the cost of
25 the capacity that was former-- formerly reserved. And

1 how do you apply prudence to that?

2 MR. FRANSON: Well, that capacity has to be
3 identified. Just because Laclede puts forward a number
4 does not in and of itself mean that's the end of an
5 inquiry. What we're talking about is an overall audit.
6 And you cannot really speculate on issues until it's
7 all known.

8 And the way this program is as to this
9 particular thing, it wouldn't -- as far as Laclede's
10 concerned, it would not meet -- it would not matter
11 what -- how the numbers came in.

12 They're -- they're completely insulated and
13 it -- now, I'm not suggesting necessarily that they're
14 intentionally going to go do anything wrong. But the
15 old -- again, I would also refer to Mr. Sommerer who
16 could give you a more detailed itemization of what
17 possible things to look at.

18 But it's more the idea of a free hand that
19 Staff is troubled with.

20 COMMISSIONER MURRAY: All right. I don't want
21 to go to Mr. Sommerer right now. I'm gonna continue --

22 MR. FRANSON: Yes, ma'am.

23 COMMISSIONER MURRAY: -- asking you two or
24 three more questions.

25 The -- in terms of the ESEs themselves, is it

1 Staff's position that they will pay more for capacity
2 under this agreement or less for capacity under this
3 agreement than they would without the agreement?

4 MR. FRANSON: Well, I -- I have to back up on
5 a couple things I've said. If the numbers are, in
6 fact, correct -- and we'll use \$10 to make it easy. If
7 the schools paid \$8 and there's \$2 left to be absorbed
8 by the customers, that assumes that everything is done
9 perfectly, they absorb \$2.

10 If on the other hand the numbers are wrong and
11 it comes in at something less, then that \$2 goes up a
12 little bit. So we're -- they're not guaranteed that
13 they're going to pay only \$2. It could be that number.
14 It could be a little higher.

15 The other way if there was no agreement and
16 there's \$10 of cost, this Commission would decide what,
17 if any, is paid by -- absorbed by Laclede and what, if
18 any, is absorbed by the other customers.

19 And the idea is, that is a decision that
20 should ultimately be made by the Commission. Now, this
21 agreement would be okay as Mr. -- as Staff would
22 support what Mr. Micheel said, if this language was out
23 of there.

24 But I -- I guess in straight dollar terms the
25 customers could possibly be better off the other way,

1 assuming that they are -- at least the schools are
2 paying something and they're better off that way than
3 zero.

4 COMMISSIONER MURRAY: So -- and this -- this
5 is an experimental program that could go either way.

6 MR. FRANSON: Well --

7 COMMISSIONER MURRAY: And what would be the
8 downside from Staff's perspective of assuming that --
9 what we've been presented with here is likely to turn
10 out to be the case and -- and then that it is an
11 experimental program limited to a specific period in
12 time. Why -- why should we not be willing to do that
13 experiment?

14 MR. FRANSON: Well, it -- first of all,
15 Commissioner Murray, the -- this experiment by
16 definition is what -- if it was a true experiment, the
17 schools would be paying all the costs.

18 It's already skewed in the sense by this
19 statute. They are insulated from some of those costs.
20 Now, they've agreed to pick up some of those, in order
21 to get it to go forward. But in approving it, you
22 still have to consider is the particular agreement good
23 policy?

24 And Staff submits, again because of the
25 pre-approval, it's not good policy. And despite any --

1 all the language you want to put in and despite all of
2 the disclaimers you want, there's going to be utilities
3 that come in in the future and say, well, you gave
4 pre-approval there. Why won't you give it to me?

5 It may be in the context of some experimental
6 program, it may not. But Staff still submits it's a
7 bad policy.

8 COMMISSIONER MURRAY: Now, if the schools are
9 insulated by the statute from certain costs, somebody
10 has to pick up those costs?

11 MR. FRANSON: Yes, ma'am. And the choices
12 are -- under the statute if it -- they were -- they're
13 treated as basic transportation, the choices would be
14 Laclede and the other customers. Under the agreement,
15 the choice is only the other customers.

16 COMMISSIONER MURRAY: And yet the statute says
17 if they're treated like basic transportation customers,
18 that shall not be considered a negative financial
19 impact on the corporation. It's other customers or
20 local taxing authorities.

21 Is that inconsistent lang-- I mean, is that
22 a -- a non-sequitur in the statute?

23 MR. FRANSON: No. No, Commissioner Murray,
24 Staff doesn't believe it is.

25 What that is is -- that does not say there

1 shall -- there are no costs. There -- there may very
2 well be costs. And we wouldn't be -- if everyone
3 agreed that there were no pipeline capacity costs
4 attributable to schools, we wouldn't be here.

5 This would have already been resolved long
6 ago. This has been the issue all the way through. But
7 what Paragraph 6 does is says that they are not a
8 negative financial impact.

9 What it does is it goes back up to the basic
10 overall -- Mr. Zucker was essentially correct that one
11 of the underlying premises of this is it's an
12 experiment, but it does not harm the gas company, it
13 does not harm other customers and it does not harm
14 local taxing authorities.

15 Here we've got a special section that says, if
16 there are costs -- it says, shall treat the gas -- gas
17 corporation's pipeline capacity costs for associated
18 eligible school entities. That language in and of
19 itself seems to suggest there are costs; however, it
20 tells the Commission how they shall be treated.

21 They are not a negative financial im-- they
22 don't have a negative financial impact and not
23 considered on the other group, that being the gas
24 corporation, its other customers, local taxing
25 authorities.

1 What that does is it removes schools from
2 paying those. And those have to be picked up by these
3 other entities at some point in time. And that's what
4 we're talking about ultimately in an ACA proceeding
5 where the audit -- the results of an audit are known.

6 COMMISSIONER MURRAY: But isn't that a
7 negative financial impact on the corporation, its other
8 customers and potentially the local taxing authority?

9 MR. FRANSON: Absolutely. But since the
10 statute tells us it's not, then that effect of that
11 statute is it's -- it's not considered that, and the
12 Commission cannot consider it to be a negative
13 financial impact. But ultimately, since there are
14 costs, what that -- the net effect of that is to remove
15 schools from the obligation to pay those.

16 COMMISSIONER MURRAY: So it's a legal fiction
17 that it's not negative financial impact?

18 MR. FRANSON: That -- I'm not -- I'm not sure
19 I like -- no disrespect, Commissioner. I'm not sure I
20 like the terminology, but that is -- the negative
21 effect of it is you are to treat them this way. But
22 sometime in the future there's going to be a day of
23 reckoning on those costs, and somebody's got to pay
24 them.

25 And that's why -- that's -- that's why an

1 audit of this was ultimately considered.

2 COMMISSIONER MURRAY: All right. Thank you.

3 I think I'll let the other Commissioners -- and I --
4 unless there is another -- another party's counsel that
5 would like to respond to anything that I asked
6 Mr. Franson while we're here.

7 MR. ZUCKER: I'll be glad to.

8 COMMISSIONER MURRAY: Mr. Zucker?

9 MR. ZUCKER: I'll -- I'll be glad to respond
10 to some of the issues that you raised. First of all,
11 the issue that you raised last about the -- the legal
12 fiction, well, let me kind of explain the -- where that
13 language came from.

14 In the original statute in Paragraph 5, which
15 is actually still in the statute, it says that the
16 Commission shall approve such tariffs upon finding that
17 implementation of the aggregation program set forth in
18 such tariffs will not have any negative financial
19 impact on the gas corporation, its other customers or
20 local taxing authorities.

21 So what -- this is our third time before you
22 now on this case. And the first two times we took the
23 position that the -- the fact that the statute
24 guaranteed that there not be any negative financial
25 impact on those parties, and that the schools had to

1 pick up all of their capacity costs.

2 The schools did not want to do that. They
3 argued against that both in -- in October of 2002 and
4 again in April of 2003. And then the statute changed.

5 And the change in the statute accomplished
6 what the schools sought there. And the -- the language
7 in Section 6 in effect says, we -- the schools want to
8 be treated like basic transportation customers, and
9 this will not be considered to be a negative financial
10 impact, which means that the schools do not have to
11 pick up the -- the capacity costs.

12 That leaves the capacity costs to be picked
13 up, as -- as you've said, by somebody else. And -- and
14 I think that's the meaning of Paragraph 6 is that -- to
15 clarify that the schools are -- are permitted to avoid
16 those costs.

17 COMMISSIONER MURRAY: As I read that,
18 it's -- it -- it's pretty clear that there will be
19 negative financial impact. It's just that the
20 Legislature has said we won't consider it. And that
21 I --

22 MR. ZUCKER: Right. This is a negative
23 financial impact that they're gonna allow in effect so,
24 yes, you're -- you're right.

25 Just a couple of other issues that I'd like to

1 address. The -- the pre-approval argument made by the
2 other parties here, with all due respect it is a -- is
3 a red herring.

4 What -- what they're referring to as
5 pre-approval is simply approving all of the terms of a
6 program. And for ex-- I'll give you an example. The
7 MGE -- MGE had a low-income program for I think
8 \$400,000 in which certain customers get to pay less on
9 their monthly bill.

10 MGE was allowed to collect that money that
11 they wouldn't have collected from the low-income
12 customers from the remainder of their customers. That
13 was stated specifically in the tariff and -- and was
14 part of the deal up front. So, you know, that was --
15 to the extent that that's called pre-approval, that was
16 all pre-approved.

17 Laclede has a weatherization program in which
18 low-income customers get to have work done on their
19 homes to -- to weatherize them. And in the -- in the
20 last year, in fact, 194 homes received weatherization
21 treatment.

22 Our tariff provided that we would collect
23 the -- the -- the amount of money to be paid in that
24 program from our other customers. So, again, this is
25 something that -- if you want to call that

1 pre-approval, that's pre-approval. But it's all just
2 part of the -- the total arrangement.

3 To address Mr. Micheel's point on Paragraph 6
4 where he said that when a -- when a basic
5 transportation customer leaves our system, Laclede is
6 not -- Laclede doesn't get relief from that capacity.
7 The truth of the matter is we've never been required to
8 absorb that capacity, and the tariff simply codifies
9 that.

10 COMMISSIONER MURRAY: I'm sorry. Mr. Zucker,
11 you say you've never been required to absorb it, but
12 you have been required to share it, have you not?

13 MR. ZUCKER: To share it? Well, I mean,
14 there --

15 COMMISSIONER MURRAY: To share the cost, I
16 mean.

17 MR. ZUCKER: Well, there would be an ACA audit
18 in those cases. And I think we -- there's never been
19 any -- any requirement that -- that we pick up any of
20 those costs. So I would guess I would answer no.

21 And all we're saying here is that -- and --
22 and let -- let me clarify one other thing. In terms of
23 the -- what -- what -- what review there will be and
24 there won't be. There will still be an ACA review. It
25 will be a comprehensive review.

1 The only thing that we're asking for is not to
2 have to absorb the cost of 20 percent of the capacity
3 that was reserved for the schools that participate in
4 this program.

5 And so it's a -- it's a -- it's a very minor
6 piece. It doesn't have to do with any other part of
7 the aggregation statute or anything else having to do
8 with -- with the remainder of the pipeline capacity
9 that we have in our system.

10 That -- that's all I have, unless you have
11 more questions for me.

12 COMMISSIONER MURRAY: No. But I would like to
13 ask Mr. Micheel's response.

14 MR. MICHEEL: Thank you, Your Honor.
15 I've -- wow, I've -- I've got a lot to say, I guess.
16 Let me -- let -- let me go backwards, as if that's the
17 first thing on my mind. And I apologize for being out
18 of the room. I had something I had to do.

19 With respect to Mr. Zucker's claim with --
20 with prudence issues with -- with the large industrial
21 customers, look, I want to make it abundantly clear to
22 the Commission that at the end of the day maybe
23 everything Laclede has done with respect to this
24 program is going to be prudent and all other customers
25 are going to pick up this extra 20 percent of the cost.

1 My problem is it -- it's pre-approved. And I
2 don't think that's what the statute means in --
3 in -- with all due respect to -- to Mr. Franson, I read
4 Subsection 6 to say, you have to treat them like you're
5 treating your large industrial customers.

6 And it goes on to say, the Commission may
7 adopt by order such other procedures not inconsistent
8 with this section, which the Commission deems are
9 reasonable and necessary to administer the experimental
10 program.

11 And that's what I'm asking you to do here, is
12 adopt a procedure that says, we're not going to
13 pre-approve these costs. And say, look, we know you've
14 got 20 percent out here. We're going to treat these
15 costs just like we do when we have a large industrial
16 customer that leaves the system.

17 We'll look at it in the ACA. If the Company
18 did everything prudent -- and I'm not suggesting they
19 haven't -- we'll allow recovery.

20 I'm saying you shouldn't up front say
21 irrespective of what the Company does, you recover
22 those costs. And that's what I think
23 Subsection J says.

24 With respect to Mr. Zucker's claim with the
25 MGE low-income program and the Laclede weatherization

1 program, those programs do not say -- do not say if MGE
2 does something imprudent or if Laclede goes out and
3 spends the money on something it wasn't supposed to
4 spend the money on that the Staff or the Public Counsel
5 can't raise that and say, yes, you recovered \$400,000
6 in rates, but you blew \$100,000 of it at -- at the
7 bingo parlor. And that wasn't something you were
8 supposed to doing. That -- that the Commission can't
9 make an adjustment. So I think that pre-approval
10 argument is -- is not appropriate.

11 With respect to Mr. Franson's arguments about
12 harmonizing Subsections 5 and 6, I just didn't get it.
13 I -- I just didn't understand his argument. I mean, I
14 think the -- the additions to Subsection 5 say that,
15 yes, the Company and the schools can agree who's gonna
16 be responsible for -- for the pipeline charges. And I
17 agree that -- that they've done that here.

18 And then Subsection 6 says, the Commission
19 shall treat the gas corporation's pipeline capacity
20 costs in the same manner as for large and industrial
21 commercial customers. And I -- I say that's not
22 pre-approval, Commissioner. That's you look at it in
23 the ACA.

24 And I agree with Mr. Franson and -- and -- and
25 with Mr. Zucker that even though there is a negative

1 impact to saying the school boards shouldn't have to
2 pay the full boat of what their costs are, the
3 Legislature in its wisdom, some may say, said we're
4 not -- you know, we're supposed to close our eyes to
5 that negative financial impact. And I understand that.

6 And I -- and I think you're exactly right,
7 Commissioner, in the point you make. At some point
8 there are going to be some costs that are unrecovered.
9 And the issue with -- with all costs who's going to
10 recover those costs.

11 And I agree with Mr. Franson. You have
12 two possible part parties. You have Laclede Gas
13 Company and you have the other customers. What I say
14 is the appropriate time to make that determination of
15 which party should recover those costs is in the actual
16 cost adjustment proceeding where you have a proceeding
17 set up to look at all facts and all relevant
18 information.

19 Do I think in that proceeding, Commissioner,
20 that somebody's going to be able to make a real
21 colorful argument that something is wrong? I don't
22 know, because I haven't seen the facts.

23 What I know right now today, I'll tell you,
24 would be a pretty hard argument to make. But that does
25 not relieve the Commission from the statutory

1 requirement, as I see it, in Subsection 6, that you
2 should treat these pipeline capacity costs as you treat
3 recovery for large industrial customers.

4 And that does not mean that this Commission
5 should abandon an important, in my view, regulatory
6 preceptor -- that you're not going to give pre-approval
7 to costs and you're not going to give up your right to
8 look at those costs.

9 In the end of the day, Commissioner, what do I
10 think is gonna happen probably? You're going to
11 say after hearing or we're going to look at it and
12 you're gonna say, well, because of the Legislature's
13 great idea, other customers are going to be picking up
14 20 percent of those costs.

15 What do I think personally about that? At the
16 end of the day it's just a classic cost -- cost shift.
17 The customer was either gonna pay it when they pay
18 their school taxes or they're gonna pay it when they
19 pay their gas bill.

20 So, I mean, at the end of the day I
21 probably -- my customers are going to pay. But as a
22 policy matter and consistent with this statute, I don't
23 think you should make that determination until the
24 ACA proceeding until you know all the factors.

25 And that's all I'm saying here. And that's

1 why I'm strenuously objecting to Subsection J. I think
2 it's inconsistent with the statute. I think it's bad
3 public policy.

4 COMMISSIONER MURRAY: Thank you.

5 And just one more. I'd just like to ask,
6 Mr. Zucker, why wouldn't the -- why wouldn't Laclede be
7 willing to eliminate that language from Section J,
8 that -- that Mr. Micheel has just focused on?

9 MR. ZUCKER: Why wouldn't Laclede or what --
10 why did we ask for it?

11 COMMISSIONER MURRAY: Or would Laclede --

12 MR. ZUCKER: Would Laclede?

13 COMMISSIONER MURRAY: -- be willing to.

14 MR. ZUCKER: No, we would -- we would prefer
15 not to. And that's because we feel like that's the
16 only benefit that we're -- we're getting out of the
17 agreement.

18 In other words, let me clarify one point.
19 Between rate cases we get to keep all of the pipeline
20 capacity release revenues that we earn.

21 So here it -- should the schools leave
22 the -- the system and then go and buy pipeline capacity
23 from us that we released, we would get to keep that
24 money.

25 What we've done is we've gone out of our way

1 to arrange a deal in which they would pay 4/5ths of --
2 of the total capacity that's reserved for them. And we
3 would take that money, which we would otherwise be
4 entitled to under our -- our rate case stipulation, and
5 contribute it to the PGA for the benefit of our
6 customers.

7 So we've made the customers 80 percent whole
8 in a situation in which they were at risk for the whole
9 100 percent, should the schools walk away and not buy
10 any capacity for us.

11 And all we want, then, is -- is some assurance
12 that, with regard to the remainder of the 20 percent,
13 we won't be asked to -- to pick that up.

14 COMMISSIONER MURRAY: And without the
15 agreement, what would you do with the -- that
16 80 percent?

17 MR. ZUCKER: Well, the -- the two choices --
18 as Mr. Franson pointed out, the two choices given us
19 under the statute is to reach an agreement with the
20 schools or file a tariff that, in effect, treats the
21 schools like basic transportation customers for purpose
22 of pipeline capacity costs.

23 So without an agreement, we would then file a
24 tariff that did that. That, in effect, said that
25 the -- the schools were not required to buy any of the

1 capacity and -- nor would we be required to -- to sell
2 them any.

3 COMMISSIONER MURRAY: But for any capacity
4 that they did buy, how would that be treated?

5 MR. ZUCKER: Well, I mean, I guess it depends
6 who they bought it from. If they --

7 COMMISSIONER MURRAY: If they bought it from
8 Laclede.

9 MR. ZUCKER: If they happened to buy capacity
10 that we would release, you know, I think the right
11 answer is -- is that -- that that would be revenues
12 that we could get -- that we could keep just like we
13 keep any revenues that we -- from pipeline capacity
14 releases.

15 COMMISSIONER MURRAY: So it would not go into
16 the ACA calculation at all?

17 MR. ZUCKER: Not in my opinion.

18 COMMISSIONER MURRAY: All right. Thank you.

19 Thank you, Judge.

20 JUDGE MILLS: Thank you.

21 Commissioner Gaw?

22 COMMISSIONER GAW: Thank you, Judge.

23 I -- I might ask Laclede just very quickly
24 whether or not they agree with Staff's interpretation
25 of the modification of Section 6 by the language in

1 Section 5 that says, except as may mutually
2 agree -- may be mutually agreed by the gas corporation
3 and eligible school entities and approved by the
4 Commission.

5 MR. PENDERGAST: Yes, Commissioner Gaw, if I
6 could answer that one. We do think that's a better way
7 of harmonizing those two provisions than the
8 interpretation that Mr. Micheel has suggested.

9 And furthermore, whether you harmonize it in
10 that way or not, it's important to go ahead and
11 recognize that the language that we've included in the
12 tariff regarding the no absorption -- even if you
13 accepted Mr. Micheel's interpretation is, in fact, in
14 full compliance with the law.

15 And the reason it's in full compliance with
16 the law is because the current way the Commission has
17 treated those capacity costs when a large basic
18 customer transfers from sales to transportation
19 service, is it has permitted Laclede to recover them.

20 It has not required that Laclede go ahead and
21 absorb them. And what this does is simply codify that
22 current treatment. And what Mr. Micheel is really
23 proposing is that you elevate the procedural aspects of
24 it over the substance of it, and say that because the
25 Commission also looks at these costs in an ACA, even

1 though it has consistently treated them in this manner,
2 you need to elevate that procedural element over it and
3 say you can't provide in the tariff for that treatment
4 the Commission's actually followed.

5 And -- and -- and what he's trying to do is to
6 go ahead and preserve the Commission's opportunity at
7 some future point in time to impose a treatment that's
8 different from what the treatment of those costs is
9 today. And that is not consistent with the statute by
10 any means.

11 So what's consistent with the statutes is
12 treat them like basic transportation customers -- costs
13 are treated, and that means that -- that we do not --
14 we're not required to absorb them, because we're not
15 under current Commission treatment. Never have been.

16 And if anybody is aware of any instance where
17 we have been, you know, they're free to go ahead and
18 point that out to you.

19 COMMISSIONER GAW: I -- I appreciate your --
20 your answer, but I -- I would like an explanation as to
21 how that modification from Subsection 5 gets into
22 Subsection 6 in reading that statute. Cuz I'm having a
23 hard time understanding how you can read it that way,
24 just based upon the way it's written.

25 I mean, if I were to write it -- if I wanted

1 to write it so that it would do that, I would have put
2 it up in the beginning and say, this modifies 5 and 6.
3 I would have put it up there. It's not done like that.

4 MR. PENDERGAST: Right.

5 COMMISSIONER GAW: This is not written that
6 way.

7 MR. PENDERGAST: Commissioner Gaw, if I were
8 to write the statute myself, I would probably write it
9 a little more clearly as well. And -- and -- and I
10 agree that you do have to go ahead and -- and study it
11 a bit to go ahead and interpret it.

12 But the fact of the matter is if -- if that
13 trumps the no absorption language, which I don't it
14 does --

15 COMMISSIONER GAW: And I'm not suggesting one
16 way or the other on that issue. I'm just -- I'm just
17 narrowly focused right on trying to understand why this
18 language was written the way it was instead of a more
19 obvious way to accomplish the result that the Staff is
20 arguing it does.

21 MR. PENDERGAST: Well, I -- I agree it could
22 have been written more clearly. But by the same token
23 I -- I think Staff is pointing out that to the extent
24 you have an agreement that says they're committed to
25 paying 80 percent of the capacity costs that were

1 formerly reserved for them -- something that basic
2 transportation customers are not required to do
3 today -- to the extent that there's a provision in the
4 agreement that says those contributions will be flowed
5 through to other customers, rather than retained by the
6 Company in between rate cases, and to the extent that
7 it says that Laclede won't be required to absorb those
8 amounts.

9 If you're going to go down to the next section
10 and say, oh, by the way, you can only treat them in the
11 same way that you treat transportation customers, you
12 would, you know, eviscerate all of those elements of
13 the agreement.

14 And I don't think you can interpret a statute
15 in a way that says -- Paragraph or Section 6 was
16 designed to go ahead and -- and eviscerate Paragraph 5
17 and the agreement that was reached in there.

18 I think the better interpretation is that
19 that's subject to Paragraph 5. Should it have had
20 language making that more explicit, I think it probably
21 would have been helpful. But -- but I think that's
22 where you have to finally come down on the statutory
23 interpretation.

24 COMMISSIONER GAW: But why does it -- why in
25 Paragraph 5 would you -- would you think that when

1 it -- when it talks about this agreement that what
2 it -- it seems to be referring down below, shall not
3 require eligible school entities to be responsible for
4 pipeline capacity charges for longer than is required
5 by the gas corporation's tariff.

6 It -- if -- if I read that sentence just by
7 itself, it -- it seems that it's just creating an
8 exception on the length of time that those capacity
9 charges may -- may be -- may be dealt with.

10 I -- I'm -- is there a reason why -- I -- I
11 know you don't necessarily know this, but do you have
12 an -- an idea about why that language has to do with
13 the length of time there instead of -- instead of
14 dealing with other conditions and other things that are
15 discussed in 6.

16 MR. PENDERGAST: I -- my only speculation
17 would be -- Mr. Brownlee may be able to illuminate this
18 more than I can -- was that -- I mean, one of the
19 issues when we previously proposed that -- that the
20 schools be required to pay 100 percent of their
21 capacity costs was that -- well, when a -- a large
22 basic customer, you know, converts from sales to
23 transportation service, you don't require that they do
24 that for any particular length of time.

25 In fact, you don't require that they do it

1 for, you know, even a day after they've gone ahead and
2 converted. So maybe that's what, you know, focus the
3 emphasis on -- on length, as opposed to -- to something
4 else, as opposed to level or amount or quantity.

5 But -- but that's just frank speculation on my
6 part.

7 COMMISSIONER GAW: Mr. Brownlee, do you have
8 any light to shed on that particular issue?

9 MR. BROWNLEE: Well, Mr. Speaker, you know
10 that when certain things are done at the Legislature --
11 there were a number of people, including Senator Good
12 that had input in that. There were municipalities that
13 were concerned. And the criticism you raise about the
14 artfulness of the drafting is probably well taken.

15 Having said that, that's about the best
16 explanation I can give. I -- I --

17 COMMISSIONER GAW: Okay.

18 MR. BROWNLEE: All of us know that the way
19 things occur over there and with amendments and with
20 things added on they're not always perfect. And this
21 is not, but --

22 COMMISSIONER GAW: And I'm just trying to --
23 and I'm just trying to get an example of that or if
24 there's something --

25 MR. BROWNLEE: Yeah, that's what it --

1 COMMISSIONER GAW: -- that was intended by the
2 language.

3 MR. BROWNLIE: I think it was an example. We
4 wanted to keep what -- the guarantees in the -- in the
5 statutory language, but we also had to fix the problem,
6 which we did, with the treat it just as they would, you
7 know, your industrial or commercial.

8 So it's -- they can be read together. And --
9 and I think that's what the agreement does. If I very
10 briefly could add an anecdotal analogy, the issue of
11 pipeline capacity -- you can look at it as sort of a
12 poker game. We could call it pipeline capacity poker.

13 Under the agreement the -- you're gonna win
14 80 percent of the time; that is, the schools are gonna
15 pick that up. 20 percent you may lose. It'll go to
16 other customers.

17 If you don't have the agreement, you've got
18 100 percent at stake. And as it has existed for the
19 last 15 years under the Laclede tariff, as Mr.
20 Pendergast pointed out, 100 percent has gone to the
21 other customers and none to Laclede.

22 So looking at the history -- and I can't
23 envision in this case, as I think Mr. Micheel was very
24 candid in pointing out -- I can't envision that there
25 would be much of an imprudence argument when, in fact,

1 Laclede is doing what it has been ordered to do by the
2 Legislature.

3 So I think looking at -- kind of looking at it
4 in that odd way I think this is a win/win deal for --
5 for the -- the school children and -- and Laclede.

6 And I -- I realize that 20 percent may go to
7 other customers. But, again, that is speculative.
8 There might not be any, so, you know --

9 COMMISSIONER GAW: Mr. Micheel?

10 MR. MICHEEL: I -- I would just say, Your
11 Honor, that that begs the question. The -- the issue
12 is -- in my mind again, and I hate to harp on it -- is
13 should this Commission pre-approve it?

14 I haven't heard from anyone that Laclede is
15 not going to have every opportunity to come in here and
16 seek recovery of that 20 percent or whatever the
17 percentage is.

18 My objection is to this Commission
19 pre-approving that recovery.

20 COMMISSIONER GAW: And I want to get to that
21 in a little bit. But I -- I'm -- right now I'm -- I'm
22 really just trying to understand how to -- how to
23 interpret 5 and 6 in a consistent way.

24 MR. MICHEEL: Well --

25 COMMISSIONER GAW: And so I --

1 MR. MICHEEL: I'll -- I'll tell you how I
2 interpret it.

3 COMMISSIONER GAW: What is that -- what do you
4 think that language is --

5 MR. MICHEEL: I'll --

6 COMMISSIONER GAW: -- referring to in 5 when
7 it -- when it seems to be narrowly focused on for
8 longer than is required? And I -- maybe I shouldn't be
9 focused so much on that.

10 MR. MICHEEL: I think -- this is me -- I
11 wasn't at the Legislature. I don't know anything about
12 it. This is just me reading it.

13 I think the first part of the bolded sentence
14 says, the gas corporation and the schools can agree to
15 some sort of deal. Okay.

16 And that the -- the -- the -- the schools
17 won't be responsible for any pipeline capacity charges
18 longer than transportation customers would be in the
19 Company's current tariffs. Okay. That's the end of
20 that.

21 COMMISSIONER GAW: Unless they agree
22 otherwise?

23 MR. MICHEEL: Unless they agree otherwise.
24 They can -- they can agree. Then you go to 6, and --
25 and I think it's telling the Commission how they're

1 going to treat the capacity associated with the deal or
2 not deal that they make.

3 And they're saying, Commission, you shall
4 treat that gas pipeline capacity associated with
5 eligible entities in the same manner as large
6 industrial customers and commercial basic
7 transportation customers.

8 And in the past when those customers have left
9 the pipeline, Commissioner, there hasn't been any sort
10 of charge for them to leave or anything. They just
11 say, look, we qualify. Thanks. We're -- we're gone.
12 And Laclede has that capacity.

13 COMMISSIONER GAW: And you have the question
14 of whether or not how that -- that -- how that cost is
15 handled?

16 MR. MICHEEL: Exactly. And --

17 COMMISSIONER GAW: So then and -- and that
18 comes up in an ACA decision?

19 MR. MICHEEL: And the timing of that in my
20 practice here for 10, 12 years has been in the ACA.
21 Now, I don't disagree with Mr. Pendergast that -- I
22 can't think of a time in an ACA proceeding where we've
23 had a large industrial customer leave, and Laclede's
24 come in and said, look, you know, we had a customer
25 leave. We've got this capacity. We had it -- we held

1 it for them. They left. We need to recover that.

2 But -- and they've been able to recover that.

3 But the difference is -- and this is the distinction
4 again and back to pre-approval. In the old process we
5 haven't pre-approved that. And what this tariff says
6 is there's gonna be 20 percent out there and it's
7 guaranteed for recovery.

8 COMMISSIONER GAW: Well, let -- let's -- let's
9 explore that for just a minute. If -- let's just stick
10 with what happens with the -- with the -- the large
11 industrial or commercial basic transportation customer.
12 And ignore the -- ignore the statute for the time
13 being.

14 Okay. So -- so we get to the -- to the -- to
15 the part where there's a review. We've had some
16 discussion about it here. What happens -- who
17 gets -- who gets the benefit of -- or who -- who pays
18 the costs if you don't have somebody else buy that
19 capacity?

20 And who gets the revenue if you do? So how
21 does that work? And I'm not --

22 MR. MICHEEL: Well, my understanding would be
23 if -- if they're not ab-- if the Company is not able to
24 release that capacity, okay, then the customers --
25 assuming its prudent, the cust-- that would be just

1 part of the cost of gas that you would put -- you know,
2 it would be part of a transportation piece of the PGA.

3 COMMISSIONER GAW: Is there any review of
4 whether or not the -- the -- the capacity was marketed,
5 whether or not somebody --

6 MR. MICHEEL: Yes.

7 COMMISSIONER GAW: Are those things done in
8 the ACA?

9 MR. MICHEEL: That would be -- that would be
10 something that -- that we would look at -- or we would
11 have the opportunity to look at or the PAD, the
12 Procurement Analysis Division, would have the
13 opportunity to look at and say -- and I know indeed
14 that -- that the -- the PAD group has suggested an
15 adjustment in a -- I believe in an MGE, ACA proceeding
16 where they argued that MGE had not properly marketed
17 some capacity release on a certain pipeline for MGE.

18 So it's -- it's something that -- that we look
19 at. And we do and so, yes. I mean, that's -- that's a
20 fact or factors that you would look at at the time you
21 were deciding whether or not to allow recovery of
22 whatever percentage it is. In this case it could be up
23 to the 20 percent.

24 COMMISSIONER GAW: Okay. Now, if -- if -- if
25 we're talking about -- so -- so there's a -- there's

1 a -- that's part of what is looked at, in regard to
2 prudence review in an ACA?

3 MR. MICHEEL: In my experience, yes, it is,
4 Commissioner.

5 COMMISSIONER GAW: So if there's -- if there
6 are sales that are made, though, of that capacity that
7 was released and they're sell -- sold back to someone
8 else, then -- again, I heard some comment about who got
9 the revenue from that. What -- what's your --

10 MR. MICHEEL: It -- it depends on what -- it
11 depends on what LDC you're talking, Commissioner.

12 COMMISSIONER GAW: I --

13 MR. MICHEEL: Certain LDCs when they have a
14 capacity release, 100 percent of that capacity release
15 is going to be flowed through to customers.

16 Okay. Some companies, like this particular
17 company, have what I would term an incentive program
18 with -- with capacity release. And what we've done is
19 it's not -- it's not like a G-SIF plan.

20 What we've done is built some revenues into
21 their case, and said, look, you do average X amount.
22 It's highly confidential.

23 COMMISSIONER GAW: Sorry.

24 MR. MICHEEL: And we in those revenues, which
25 lowers the revenue requirement in a rate case. And we

1 say, for every dollar you get over X, you get to keep
2 100 percent.

3 And that gives the Company, in my view, the
4 incentive to say, hey, we've got let's say \$500,000
5 built in. We want to do \$600,000. Because if we do
6 \$600,000, we get to keep \$100,000.

7 And that, in my mind, and Public Counsel's
8 position gives them the incentive if they have a large
9 industrial customer that leaves the system -- gives
10 them the incentive to go out there and really
11 strenuously market.

12 So the answer is different for -- for
13 different LDCs. I don't disagree with Mr. Zucker with
14 respect to how under that program under that incentive
15 Laclede's are treated.

16 COMMISSIONER GAW: So if we're looking at
17 this -- this particular tariff and -- and that reflects
18 the agreement, which basically, if I understand this
19 correctly, says, we're -- we're gonna guarantee that
20 80 percent is gonna be -- gonna be reserved.

21 The 20 is gonna be -- whether we sell it or
22 not, we don't know. Is the 80 -- is the 80 percent
23 that we know is now there -- is that a better deal for
24 other customers of Laclede than going under their
25 current -- their tariff that deals with what would

1 happen if you had no guarantee of -- of that
2 80 percent repurchase? I don't know if that's --

3 MR. MICHEEL: And that's a hard one to answer.
4 And -- and let me explain to you why that's a hard one
5 to answer.

6 Because in -- in a rate case what I would --
7 what we would recommend what the Commission do is
8 re-balance that number --

9 COMMISSIONER GAW: Uh-huh.

10 MR. MICHEEL: -- and see what they've done
11 historically. And -- and -- and maybe the -- the base
12 number increases. And so the customers -- if that base
13 number increases, the revenue reduction for that
14 revenue imputation would be larger. And so in that
15 sense customers would be getting some of that benefit.

16 So I just can't -- I mean, let -- let me
17 say -- and I'm gonna be honest with you, I mean,
18 Laclede did a good job in terms of getting the
19 80 percent. And -- and I'm not -- I'm a good -- great
20 job, Laclede. Awesome. And -- and we support that.

21 It's just one narrow little item that really
22 gives me a lot of heartburn. And I -- and I think
23 it's to be commended that they're going to flow through
24 those capacity release revenues that they're going to
25 get. And then they've got an 80 percent guarantee.

1 But I think there are bigger issues that -- I
2 think I would have been -- our office would have been
3 remiss not bringing forward to the Commission and
4 saying, we think this is a problem and -- and trying to
5 lay it out.

6 COMMISSIONER GAW: Okay. Staff, do you want
7 to respond to any of that?

8 MR. FRANSON: Very, very briefly,
9 Commissioner. Staff would agree with Mr. Micheel that
10 this program can go forward without what we have termed
11 the offending language in Paragraph J, that being the
12 pre-approval.

13 Mr. Zucker talked and Mr. Pendergast talked,
14 it's just this one little piece. And that is the
15 precedent of pre-approval. And it's -- as Mr. Micheel
16 very eloquently explained, it's very unlikely that --
17 and it would be a hard case to make that Laclede, doing
18 something mandated by the Legislature, is going to act
19 imprudent.

20 But it -- Staff is troubled by that
21 pre-approval just as Office of Public Counsel is. And
22 that is our fundamental problem.

23 And I've been sitting here listening to the
24 various ways that this statute is interpreted. And
25 upon further reflection it would seem that Mr. Micheel

1 has explained that the terms not -- are not necessarily
2 mutually exclusive in that they stand independent.

3 And what it does is it -- you have -- you --
4 your first one is the costs. And you've got
5 two options. One, there can be an agreement, which we
6 have here, or these costs are gone -- looking at the
7 tariffs and then how -- what does the Commission do
8 with them?

9 Well, in Paragraph 6 it seems that they're
10 looking at doing it the same way they do it when large
11 industrial customers leave the system. And that is in
12 a full ACA process subject to com-- ultimate Commission
13 decision about the costs.

14 And there is plenty of precedent, as explained
15 by Mr. Micheel and Mr. Pendergast. It's always been
16 done consistently; however, what the difference here is
17 Laclede would have it guaranteed and pre-approved.

18 And while that's only one very small part, it
19 is a very troubling part. And that's why Staff could
20 live with this, if the offending language was taken out
21 of Paragraph J, and the schools and Laclede would be
22 commended to go forward with the program. And we'll
23 see how it works.

24 COMMISSIONER GAW: Laclede, please.

25 MR. PENDERGAST: Yes. If I -- if I could,

1 I -- I guess in a -- there was some comment about --
2 from -- from counsel from both Staff and Public Counsel
3 about just taking out the offending provision. And --
4 and, you know, I -- I do want to thank Mr. Micheel for
5 his comments about the fact that we worked very hard to
6 try and negotiate as good of a deal as we could with
7 the schools to -- to maximize their contributions.
8 And -- we did.

9 And I also want to express that I fully
10 understand where Staff and Public Counsel are coming
11 from about not wanting to have any negative impact on
12 other customers.

13 I think, as Mr. Zucker tried to indicate,
14 we've been probably a little more obnoxious on that
15 subject than just about any other LDC in the state has
16 been over the last year. And -- and that's why -- you
17 know, one of the reasons why we keep on popping up on
18 this particular issue.

19 But -- but the law did pass. And -- and the
20 law did create a situation where we were faced with
21 possibly getting no contribution from these folks for
22 our other customers at all.

23 And -- and certainly it created the
24 circumstance where even if we did get some
25 contribution, we'd need to go ahead and flow it back to

1 our other customers.

2 And we could have gone ahead and simply filed
3 a tariff that said, okay, you're gonna be treated like
4 basic transportation customers, period. And any of
5 those events might have happened.

6 And -- and quite frankly, the schools might
7 have also decided under those circumstances that they
8 didn't want to have a program as well. So we tried to
9 come up with something that would -- would -- would
10 hopefully accommodate as best we could everybody's
11 interest.

12 And -- and we do think under the circumstances
13 it's a pretty darn good deal. And -- and I guess from
14 our perspective we've already had, you know, Staff file
15 a number of pleadings about -- well, we're not sure
16 about the -- the 80 percent and whether, you know,
17 that's really equivalent to 80 percent of the capacity
18 that's reserved for the school.

19 Although it's based on the 100 percent thing
20 that we all agreed upon a month and a half ago. And
21 they're raised other concerns about the tariff.

22 And -- and quite frankly, if -- if this is a
23 deal that -- that people weren't ready to sign off on
24 and they don't like, then -- then we ought to make that
25 determination now.

1 COMMISSIONER GAW: Uh-huh.

2 MR. PENDERGAST: And -- and as a legal matter,
3 I don't believe the Commission does have the
4 authority -- certainly it hasn't interpreted it that
5 way that absent a hearing at least it can pick and
6 choose and say, well, why don't you implement this part
7 of the tariff and not the other.

8 So I -- I -- you know, I think it is a package
9 and it has to be accepted. And -- and -- and we think
10 for -- for the reasons that we've stated that it's a
11 good package.

12 But -- but if people disagree, then the time
13 to -- to make that determination is -- is now. And we
14 can go back with something that doesn't guarantee any
15 kind of contribution and doesn't require us to flow it
16 through our other customers if -- if that's everybody's
17 preference.

18 COMMISSIONER GAW: Let me -- let me see if
19 I -- if I can get a little closer to -- to the point in
20 front of us with this language.

21 Help me with this -- with -- with the -- the
22 concept of post-review. Is Laclede sugg-- suggesting
23 that there should be no review of what happens to that
24 20 percent after the fact with its argument and -- and
25 with -- and with the language in this tariff or that

1 the review should be limited in an ACA process?

2 MR. PENDERGAST: Well, and I think we're
3 saying that the review in the ACA process should be
4 limited only to the extent that if somebody were to
5 come in and -- and demonstrate that -- as we have said,
6 that the schools only used 80 percent of that capacity
7 and there's 20 percent left over here.

8 Now we've got to decide whether Laclede's
9 gonna eat it or if it's going to go ahead and
10 consistent with Commission's traditional practice and
11 current practice today -- going to go ahead and simply
12 be recovered from other customers.

13 That -- that it -- it -- it should be the
14 latter. And -- and -- and since the legislation
15 specifies that these costs are supposed to be treated
16 in the same way that they are today with basic
17 transportation customers, that's why we think it's
18 appropriate to codify that in the -- in the
19 legislation.

20 You know, I mean, I -- I -- I know
21 Mr. Micheel's point that -- that when it says treat
22 these costs the same, he's focusing on, well, look at
23 it procedurally maybe in the same way that you go ahead
24 and do, as opposed to look at it in substance and treat
25 it in substance like you do today.

1 I think the better reading of the statute is
2 that it's supposed to go ahead and be treated in
3 substance like it is today. And that's all our
4 legislation codifies.

5 And it doesn't pre-approve that any more than
6 in the weatherization program you pre-approved us
7 recovering \$300,000 to pay for that program or in MGE's
8 program you pre-approved in a rate case an eight-cent
9 charge on other customers when -- when you approved
10 that low-income program. It's part and parcel the same
11 thing.

12 And -- and these vital parameters of this
13 experiment ought to be established now so we all know
14 what we're dealing with, rather than after the fact.

15 COMMISSIONER GAW: Now, Mr. Pendergast,
16 when -- when you are dealing with an ACA review
17 of -- of this -- of -- of capacity that's been released
18 by an industrial customer, what -- when you're dealing
19 with that, what are the parameters of the review that
20 you've experienced from Staff?

21 MR. PENDERGAST: In my -- my experience on
22 that is there's been really no specific focus
23 whatsoever on a specific industrial customer leaving
24 and what impact that had on our overall capacity.

25 What I -- what I will say is there was an over

1 all look at whether we had sufficient capacity or
2 excess capacity. It wasn't in -- well, it was in this
3 last ACA that had two cases combined.

4 And the Commission ultimately had to decide an
5 issue in the one case. But the case before that Staff
6 had recommended an adjustment, based on its perception,
7 at least at the time, that maybe we had too much
8 capacity.

9 But I think after further discussions between
10 the Company and the Staff, that adjustment was
11 withdrawn by Staff and -- and -- and, you know, no
12 further adjustment was made.

13 So it was really looking at it -- at the
14 capacity question on an overall basis just con--
15 considering all of your requirements for all of your
16 customers and what kind of capacity you've lined up.

17 Do you have more capacity than you need or
18 not? And -- and I don't recall but certainly
19 Mr. Sommerer can indicate if -- if I'm correct really a
20 lot of specific focus on just one or two customers and
21 what impact that had on a particular capacity.

22 And -- and, you know, I -- I do agree. I
23 think it's very unlikely that any kind of adjustment
24 like this would be made, which to me says, well, then
25 why not focus this in the tariff.

1 Because we're talking about a relatively small
2 amount of capacity here. The total cost of this
3 capacity as -- given what the schools have told us
4 about how many people might be participating in the
5 program is probably around \$600,000, \$700,000.

6 Now, that's -- if you look at 600,000
7 customers even if, you know, they picked up all that
8 capacity, be about a buck a customer.

9 You know, we've guaranteed that at least
10 80 percent of it won't go ahead and be picked up by
11 customers. So you're talking about \$100,000 which, you
12 know, you get down to the -- probably the 3 to 5 cent
13 range a month sort of figure.

14 And I'm not saying 3 to 5 cents a month isn't
15 important, but -- but, you know, we're talking about
16 very incremental, very small impacts here.

17 And I, you know, don't really see how those
18 small impacts in a -- a system that big could even, you
19 know, raise a capacity adjustment concern.

20 I mean, if -- if that's a concern, it's got to
21 be for reasons other than that.

22 COMMISSIONER GAW: Mr. Micheel, do you want to
23 respond?

24 MR. MICHEEL: Well, I would just say my
25 reading of that language when it says, provided for the

1 Company shall not be required to absorb -- shall not be
2 required to absorb even -- even if you find a problem,
3 so --

4 COMMISSIONER GAW: Let -- let me -- let me ask
5 you in following up on that comment. And again, you
6 know, I'm not suggesting that the Commission can modify
7 language in a tariff. But it wouldn't be the first
8 time the Commission has given guidance on what was
9 acceptable and what was not in another filing.

10 Is there language that can be added to that
11 language, rather than deleting the language that would
12 satisfy Public Counsel's concern regarding prudence
13 review?

14 MR. MICHEEL: I -- I imagine I could try to
15 draft something that that would -- would --

16 COMMISSIONER GAW: I'm trying to narrow this --

17 MR. MICHEEL: -- preserve some prudence.

18 COMMISSIONER GAW: I'm trying to narrow this
19 down to understand what the real issue is here. I
20 mean, we're -- we're dealing with -- it seems to me
21 that we're dealing with on one hand Laclede's position
22 that we don't want to be responsible for this
23 20 percent of the capacity, and a concern from Public
24 Counsel and Staff that, well, what if they didn't --
25 maybe they didn't quite market it right or maybe

1 that -- there's some issue on prudence of that that
2 we -- we later come out and find the concern with.

3 And I don't know if I'm even hitting that
4 correctly, but that's the reason I'm asking the
5 question.

6 MR. MICHEEL: I -- I think that is,
7 Commissioner. And -- and -- and maybe I haven't
8 expressed this. It's a bigger policy issue for me --
9 it -- for our office.

10 And, you know, when -- when I first started
11 here, I was involved in a rate case that -- that we did
12 this little thing -- it was gonna to be an accounting
13 order. And it was just gonna be for one case and, you
14 know, we should go along with that and that's not a
15 problem.

16 And now accounting orders, in my humble
17 opinion, they've run amuck. And so I made that mistake
18 once, and I just vowed to myself that, you know, I'm
19 not gonna make that mistake again.

20 And -- and I see this as -- as opening the
21 door. And I'm just here like Old Yeller, you know, I'm
22 just barking. And I'm just saying that there -- there
23 may be a problem, Commission. Let me articulate the
24 problem. You people are the ones that decide.

25 And -- and -- and I just want to be able to go

1 home at night and say, you know, I barked.

2 COMMISSIONER GAW: I understand, Mr. Micheel.

3 I just -- you just -- I -- I hope you remember what
4 happened to Old Yeller.

5 MR. MICHEEL: It happens to me a lot in these
6 procedures.

7 COMMISSIONER GAW: Anyway, I'm sorry.

8 But -- but to get back to this point,
9 if -- if -- if Public Counsel and Staff are saying on
10 one hand, you know, Laclede did a pretty good deal here
11 on this 80 percent, but we want to make sure that
12 they -- that -- that I don't -- I -- I'm just -- I'm
13 inserting this -- that their marketing the 20 percent
14 capacity, that they're doing what they need to do with
15 the 20 percent.

16 As long as they're prudent in the way they
17 handle that, we -- we're not gonna say that they should
18 pick that up. That's what I'm hearing. And -- but I
19 don't know if -- I don't know if I'm understanding it
20 exactly correctly.

21 It seems to me that that's -- that's a
22 different issue than this just being about whether or
23 not that sentence is deleted. And I -- I'm trying to
24 understand that. And I want to make sure I'm not off
25 track before we leave.

1 MR. MICHEEL: Right -- right now,
2 Commissioner, in terms of -- and I think Commissioner
3 Murray asked one of the -- I think Mr. Franson, well,
4 what kind of issues would there be with prudence.

5 And sitting here today that's -- that's the
6 one that comes to mind, whether or not, you know,
7 they -- they actively marketed that and did the things
8 that they could do, given market conditions.

9 My problem with it is, you know, a couple -- a
10 year down the road there -- there are a lot smarter
11 people than me that may see other things that they
12 should have done or -- or want to bring to the
13 Commission.

14 And that's where I'm reticent for saying I can
15 only limit it to that.

16 COMMISSIONER GAW: But you're not suggesting
17 that as -- so long as they're prudent in what they do
18 with -- with that capacity, that 20 percent, that --
19 that there should be a later on thing saying 20 percent
20 wasn't a good figure; it should have been a different
21 percentage?

22 MR. MICHEEL: No. I mean, if -- if they're
23 prudent in doing that, then -- or if they deal with
24 that prudently, you know, I -- I don't have any problem
25 with the 80 percent. I mean, maybe we'll look at that

1 and see that they -- they drove a hard bargain. I
2 don't think that's gonna be a problem.

3 And in the end if everything they did with
4 respect to the 20 percent after our review is fine,
5 then we're not going to oppose it, and they're going to
6 recover.

7 COMMISSIONER GAW: Yeah, but -- but you're
8 not -- I -- I want to make sure I understand. You're
9 not arguing the 20 percent as being -- as being a
10 problem?

11 MR. MICHEEL: No, Commissioner.

12 COMMISSIONER GAW: And -- and, Staff --

13 MR. MICHEEL: Absolutely not.

14 COMMISSIONER GAW: -- are you arguing that
15 point?

16 MR. FRANSON: Staff believes that the -- if
17 the 80 percent is, in fact correct, it's a good deal in
18 one sense. But, Commissioner Gaw, there's still
19 ultimately two issues. There's still that 20 percent.

20 And if -- if that language was removed and
21 then we're at some point in the future in an ACA
22 proceeding where Laclede has been deemed to be prudent
23 and the -- but the question would remain, who picks up
24 that other 20 percent?

25 Laclede is arguing precedent, and this -- this

1 does two things. It re-- it removes prudence review
2 and it insulates the Company from any of that
3 20 percent.

4 That is still a problem, and the Staff would
5 submit that while there's precedent in favor of
6 Laclede, that's ultimately a decision that needs to be
7 made by the Commission.

8 COMMISSIONER GAW: Does -- does the Staff have
9 a problem with the 80/20 percent figure so long as
10 they're -- the appropriate prudence is -- is applied by
11 Laclede to the 20 percent capacity that is not reserved
12 by the schools?

13 MR. FRANSON: No, Commissioner, Staff does not.

14 COMMISSIONER GAW: Okay.

15 MR. MICHEEL: Commissioner Gaw, can I just say
16 one more thing?

17 COMMISSIONER GAW: Sure.

18 MR. MICHEEL: I'm sorry.

19 COMMISSIONER GAW: I'm gonna go back to --

20 MR. MICHEEL: I -- I just want to -- I just
21 want to say why I don't think that I have a problem
22 with the 80 percent.

23 COMMISSIONER GAW: Yeah, that's -- that's
24 all --

25 MR. MICHEEL: And that -- and that's rooted

1 in -- in Subsection 5 of the statute where it says,
2 except as mutually agreed upon by the gas corporation
3 and the eligible school entity. And -- and so the
4 statute comes right out and says that the eligible
5 school en-- entity and the gas corporation can agree to
6 this type of split.

7 COMMISSIONER GAW: Well, that -- doesn't that
8 have to do -- again, isn't that back in that
9 Subsection 5 that has to do with how long that thing
10 goes?

11 MR. MICHEEL: Yeah, but I -- I --

12 COMMISSIONER GAW: And I don't necessarily
13 disagree with it that they can -- they can do something
14 different than that. But I'm not sure what that
15 modifies.

16 MR. MICHEEL: We -- we don't have a problem
17 with the 80 percent, and I'm just telling you that's
18 my -- you know --

19 COMMISSIONER GAW: All right.

20 MR. MICHEEL: -- that's not an issue for us.

21 COMMISSIONER GAW: Okay. And -- and I guess
22 that -- note in that statute regardless that -- that --
23 that the -- whatever agreement -- whether it does or --
24 only refer to the length of the period of time or not,
25 it does specifically say that -- that the -- that an

1 agreement approved bring the Commission.

2 I'm not sure whether we've approved -- we
3 approved this agreement in this tariff -- or if we
4 approve it, is that a -- has the Commission approved
5 this agreement -- are we asked to approve this
6 agreement in anything that we're doing here today?

7 MR. FRANSON: Commissioner, I -- I think what
8 you're -- there is an agreement, but the form of the
9 agreement between Laclede and the schools is the
10 tariff. So by approving the tariff, you're, in
11 essence, approving the agreement.

12 But the basis of their agreement is the
13 tariff, so --

14 COMMISSIONER GAW: Mr. Brownlee, you've got
15 your hand up.

16 MR. BROWNLEE: Yeah, I -- Judge, I think -- I
17 think upon the reflection the word "longer" should
18 probably be read differently.

19 COMMISSIONER GAW: Well, I understand.

20 MR. BROWNLEE: Well, I -- but I'm saying if
21 you look at it --

22 COMMISSIONER GAW: You know, it's very
23 difficult to figure out what is meant there.

24 MR. BROWNLEE: -- it -- it -- that's really --
25 it -- the -- you've raised the issue correctly

1 that -- as a time issue. That was not a concern.
2 It -- if you just looked at that word "longer" and put
3 differently in there, that's what was -- god, I sound
4 like I'm giving legislative history. But that's the
5 intent.

6 COMMISSIONER GAW: Okay.

7 MR. BROWNLEE: And it makes a heck of a lot
8 more sense if you --

9 COMMISSIONER GAW: That -- you're arguing
10 that.

11 MR. BROWNLEE: Yeah.

12 COMMISSIONER GAW: I understand that.

13 MR. BROWNLEE: Yeah. That -- that's what --
14 longer was not a consideration. And -- and

15 you -- gosh, you've been over there. You know how --

16 COMMISSIONER GAW: I -- I understand -- yeah,
17 I understand those things.

18 MR. BROWNLEE: That --

19 COMMISSIONER GAW: But I -- I have to deal
20 with what's in front of me.

21 MR. BROWNLEE: Next year -- we may change it
22 to differently next year, but --

23 COMMISSIONER GAW: Maybe somebody can make
24 that clear. But -- but on the issue of the con-- the
25 agreement being approved, are we supposed to approve an

1 agreement? I mean, I haven't seen an agreement as -- a
2 request to approve an agreement.

3 And I don't know whether or not the tariff
4 specifically incorporates the agreement. Can somebody
5 shed some quick light on that?

6 MR. ZUCKER: Yes, Commissioner Gaw. The -- I
7 think we may have put in our original pleadings back on
8 July 25th that the -- that the tariff is the form of
9 the agreement. The agreement is reflected in the
10 tariff, so --

11 COMMISSIONER GAW: So -- so -- but it's not
12 attached or anything?

13 MR. ZUCKER: No.

14 COMMISSIONER GAW: There's not any agreement
15 that's actually been filed that we've been requested to
16 approve?

17 MR. ZUCKER: Well, the tariff has been filed
18 and you've been requested to approve that. And the
19 tariff represents the agreement. The -- the --
20 especially the changes -- or specifically the changes
21 as -- as highlighted by Mr. Franson in his handout.

22 COMMISSIONER GAW: And I'm not -- I'm not
23 questioning that. I'm just -- procedurally I -- I
24 wonder whether or not because of that language in here
25 that -- that there -- there should be some -- the

1 agreement itself ought to be approved.

2 I -- I -- and I -- I'm just -- I'm raising it,
3 cuz I just noticed that it's written that way.

4 I -- I don't -- not to belabor that, I would
5 to -- if -- if -- to go back to my other questioning
6 with -- and let Laclede respond if -- if you would
7 about the issue of whether or not this -- this -- this
8 20 percent -- reviewing what Laclede does with that
9 capacity ought to be subject to some examination in a
10 subsequent ACA proceeding and -- and -- and how that
11 would occur if this language were left like it is.

12 MR. PENDERGAST: Yeah, and -- and -- and I
13 guess my response to that, first, I think it is helpful
14 to have Staff and Public Counsel clarify, as they have,
15 that they're not really questioning the 80/20 percent,
16 but -- but looking at potentially whether or not it's
17 been marketed prudently and that sort of thing.

18 And I guess my -- my -- my view on that would
19 be that -- that, you know, we have a -- I think an
20 obligation to go out and market that capacity already,
21 and an incentive to go out and market that capacity
22 already.

23 Because as we've indicated in between rate
24 cases, the Company goes ahead and gets to keep that.
25 And then it will later benefit customers by being a

1 part of the imputation in a rate case.

2 So I -- I guess I'm not certain why you need
3 to go ahead and both have that incentive to go out and
4 do it, and why you also need subsequent ACA review to
5 determine whether or not you were prudent in going out
6 and trying to do it.

7 I mean, it seems that the incentive was sort
8 of designed to take the place of the prudence review.

9 COMMISSIONER GAW: And is the in-- the
10 incentive any different with that 20 percent than it
11 would be in any other capacity that you have?

12 MR. PENDERGAST: No, it would not.

13 COMMISSIONER GAW: Judge, I'll defer to you.

14 JUDGE MILLS: We're -- we're gonna take a -- a
15 ten-minute recess at this point and come back at 12:30.

16 We're off the record.

17 (A RECESS WAS TAKEN.)

18 JUDGE MILLS: Let's go back on the record.

19 MR. FRANSON: Judge, if I may, Staff needs to
20 clarify a question that was asked by Commissioner Gaw.
21 And it's --

22 JUDGE MILLS: Okay. It probably -- it
23 probably would be helpful. Commissioner Gaw will be
24 right back down.

25 MR. FRANSON: Okay.

1 JUDGE MILLS: It might be more helpful to
2 clarify it when he's here.

3 MR. FRANSON: Well, I -- I would agree.

4 JUDGE MILLS: And we'll -- we'll give you the
5 opportunity to do so.

6 In the meantime, we'll move ahead to questions
7 from Commissioner Clayton.

8 COMMISSIONER CLAYTON: Finally.

9 Basically I have the same question to ask each
10 of the parties to kind of cut to the chase on this
11 thing.

12 It's kind of all -- we can -- we can talk
13 about the language that's in dispute here and -- but
14 since we're not able to amend, I mean, this is an up or
15 down type of thing and we do have a deadline.

16 So the first question that I want to ask is to
17 Mr. Brownlee and to whoever from Laclede, since you all
18 are tag-teaming over there.

19 What is the worst-case scenario if we do not
20 approve the tariff from the perspective of the School
21 Boards Association? And when I -- when I say that,
22 certainly the -- the deal wouldn't go through. So what
23 does that mean financially to the school boards? Can
24 you answer that?

25 MR. BROWNLEE: This is a -- Mr. Irwin's not

1 here, so -- and he's really our expert.

2 It -- I was just talking to another person
3 that has personal knowledge regarding that. The actual
4 savings this creates -- and you understand this is
5 percentage, because it -- dollars could be drastically
6 ex-- elevated if the price goes up would be 15 to
7 20 percent savings, which is -- so it's a very
8 substantial.

9 COMMISSIONER CLAYTON: Across each -- each of
10 the participating school districts?

11 MR. BROWNLEE: Correct.

12 COMMISSIONER CLAYTON: And -- and what would
13 that be?

14 MR. BROWNLEE: Well, I --

15 COMMISSIONER CLAYTON: 15 percent of what?

16 MR. BROWNLEE: Laclede -- of the total gas
17 costs to Laclede and -- and Rick or Mike may be able to
18 give you a better figure on that. But it's a -- it's a
19 substantial amount of money. And it's -- again, that's
20 the percentage. I couldn't -- we won't -- none of us
21 know what the gas costs are right now, although
22 obviously those will get locked in -- as soon as this
23 would be approved, that -- that -- those prices will
24 get locked in.

25 COMMISSIONER CLAYTON: Okay. Do -- do you all

1 have a comment on that? I know this is something that
2 that's the school boards, but it's an agreement that
3 you're a part of if we were to not approve the tariff?

4 MR. ZUCKER: Let -- let me ask him to repeat
5 what he -- I heard 15 percent?

6 MR. BROWNLEE: 15 To 20 percent savings.

7 MR. ZUCKER: On?

8 MR. BROWNLEE: Reduction on the gas cost.

9 MR. ZUCKER: Oh, okay. Well, I mean, from --
10 from the schools' perspective they're getting a
11 20 percent discount on the total cost of their pipeline
12 capacity. So that we know.

13 From the gas cost I don't see how at this
14 point we could tell what they're going to save, if
15 anything, because we -- I don't think they know -- or I
16 don't -- I don't know if they know or not what price
17 they're gonna pay for gas.

18 And, you know, we can't predict what's going
19 to happen in the upcoming winter with gas prices. And
20 so we can't tell exactly what -- what we're gonna be
21 paying for gas.

22 If -- if the schools buy the --

23 COMMISSIONER CLAYTON: We're having town hall
24 meetings. We can give you an idea of what's gonna
25 happen with natural gas.

1 MR. ZUCKER: Well, the -- I'd like to know.

2 If -- if the schools buy all their gas now and
3 gas prices go down, the other customers will end up
4 paying less for the cost of the commodity.

5 COMMISSIONER CLAYTON: Okay. Thank you.

6 And I want to switch to -- to Staff and Public
7 Counsel. If we -- what is the worst-case scenario from
8 your perspective if we do approve this tariff? Give me
9 the worst-case scenario -- the worst possible thing
10 that could happen.

11 MR. FRANSON: Well, Commissioner, the worst
12 possible thing that could happen is that Staff
13 envisions, No. 1, that we're assuming the 80/20 split
14 is actually accurate. And it could be higher than the
15 customers would, in fact, absorb.

16 And it would also set a precedent while the
17 Commission could limit it, it would set a precedent of
18 pre-approval. And we're going to be hearing that from
19 here on out. And Mr. Micheel gave the example of
20 accounting authority orders.

21 And while I may not agree with him that they
22 have "run amuck," it still is a reasonable analogy.
23 This is going to be repeated over and over.

24 Well, you pre-approved it in that situation
25 for Laclede. The answer is, well, but that was a

1 special circumstance. Well, this is, too, because.

2 It's -- it's going to come back time after time.

3 COMMISSIONER CLAYTON: Okay.

4 Nothing -- nothing in addition -- well, I'll just leave
5 it at that.

6 Mr. Micheel?

7 MR. MICHEEL: Commissioner, I would say that
8 it -- it's poor regulatory precedent and, secondly,
9 there's the possibility that you're pre-approving costs
10 that are not prudent.

11 COMMISSIONER CLAYTON: Okay. What do you
12 think the -- what do you think the worst-case scenario
13 of -- of costs being passed on to customers? Would you
14 have any idea?

15 MR. MICHEEL: I haven't looked at the figures
16 as an attorney, but I -- I heard Mr. Pendergast talk
17 about hundreds of thousands of dollars.

18 COMMISSIONER CLAYTON: Okay. Thank you.

19 JUDGE MILLS: Commissioner Gaw, anything
20 further?

21 COMMISSIONER GAW: Just real quickly.

22 MR. FRANSON: Judge?

23 JUDGE MILLS: Staff wanted to respond --

24 MR. FRANSON: We -- we need to clarify
25 something about a question that Commissioner Gaw asked,

1 if I may do that.

2 JUDGE MILLS: Okay.

3 MR. FRANSON: Commissioner Gaw, you asked a
4 question about, is Staff okay with the 80 percent. I'm
5 afraid that the answer that Staff gave may not have --
6 may possibly have been misinterpreted.

7 Staff is okay as putting forth in
8 transportation capacity Paragraph E where -- and the
9 fact that that has been represented as being
10 80 percent. That's a good result for the other
11 customers.

12 However, Staff is not okay -- and I'm -- this
13 is where I'm trying to clarify. You may have gotten
14 the idea that Staff is willing and agrees that the
15 80 percent will carry right on through, and is okay
16 with the Company being held harmless from that, and is
17 okay with the idea that that should be pre-approved.
18 No, Staff is not okay with that.

19 But Staff is okay is we -- the agreement
20 that's reached in Paragraph E using the numbers is
21 fine. But that should be considered as it is in
22 PGA and ACA interim subject to refund in the sense that
23 there's gonna ultimately be a Commission decision over
24 who pays that, and that should not be avoided by
25 pre-approval. And it should not be -- and the Company

1 should not be completely held harmless.

2 There's strong precedent on the side of the
3 Company to be as they have argued, but Staff does not
4 agree with that.

5 COMMISSIONER GAW: I don't think I understood
6 you, Mr. Franson.

7 MR. FRANSON: Okay. Commissioner Gaw, I
8 understood your question before -- and actually if I
9 could ask Mr. Sommerer, I think he can explain it a
10 little bit better than I can.

11 COMMISSIONER GAW: Just a moment.

12 Judge, I think Mr. Brownlee has --

13 MR. BROWNLEE: I'm really sorry. I just
14 explained to Mr. Mills, I've got to pick some people up
15 at the Kansas City Airport. And I am really against --
16 Mr. Wenzel (phonetic sp.) is here, but he wasn't here
17 all morning. So if there's any -- I hate to interrupt
18 Robert's explanation, but --

19 JUDGE MILLS: Okay. If Mr. Wenzel is gonna
20 sit in for you, we'll do our best to -- to make him
21 feel uncomfortable.

22 MR. BROWNLEE: He already does.

23 Is there anything I could --

24 JUDGE MILLS: If you can --

25 MR. BROWNLEE: Sure. Sure. Yeah, I'm -- I

1 just --

2 JUDGE MILLS: One quick question before you

3 go --

4 MR. BROWNLEE: Okay.

5 JUDGE MILLS: -- from Commissioner Murray.

6 COMMISSIONER MURRAY: I'm sorry. I'll make it
7 quick.

8 MR. BROWNLEE: One.

9 COMMISSIONER MURRAY: Can you tell me from the
10 school boards' -- from the school boards' perspective,
11 what is the consideration for the agreement flowing
12 from Laclede to the school board.

13 MR. BROWNLEE: Well, that's a real difficult
14 question that's multiple. First of all, the school
15 board association represents the schools, and this is
16 part of their duty -- is to, if we can, obtain
17 favorable, whether utility purchasing or other kinds of
18 things. That's what the School Board Association does
19 for its -- its member schools.

20 Laclede has agreed to put a tariff in effect
21 that we have with I think all of the other utilities in
22 the state that was in there last year, so that's part
23 of the consideration.

24 We've had a -- a negotiated agreement that's
25 part of the consideration. I think the -- I think it

1 goes both ways, to tell you the truth.

2 I don't think it's -- it's a -- it's a
3 contract. It's a negotiated contract. And, of course,
4 part of it is we're giving them 80 percent guarantee,
5 which is something the other utilities have not been
6 able to bargain for with -- with the school boards
7 in -- in those other service areas, so --

8 COMMISSIONER MURRAY: Mr. Brownlee, is --

9 MR. BROWNLEE: I don't know how you -- it's
10 hard -- it's just a hard question to --

11 COMMISSIONER MURRAY: The reason --

12 MR. BROWNLEE: -- we didn't get paid anything,
13 you know.

14 COMMISSIONER MURRAY: The reason I ask the
15 question is I'm thinking what is -- what is your -- the
16 school boards' incentive for entering into this
17 agreement versus just following the statute and saying,
18 we'll be treated just like every other transportation
19 customer?

20 I mean, what are the school boards getting out
21 of this, other than what they would get if they just
22 said, here's the new statute, here's what it says and
23 we're taking --

24 MR. BROWNLEE: Well, the -- when the statute
25 was changed this year, it was -- although now I can't

1 say fully negotiated, but there was -- there was a
2 legislative process involved that as part of the
3 agreement to change it and treat the schools as the
4 other industrial customers. It was a clarification and
5 I think that was -- that -- I mean, that was all part
6 of the bargain.

7 I -- I mean, we didn't sit down and -- and
8 have a legislative strategy that we've all went over
9 there together and had this amended on to a bill,
10 but --

11 COMMISSIONER MURRAY: Well, let me just
12 interrupt you, because I -- that just provided that you
13 don't have to take -- you don't have to be obligated
14 for any specific amount of capacity beyond what the
15 other transportation customers are obligated for, which
16 apparently is nothing.

17 So it took away any mandated amount that you
18 have to agree to take in capacity; is that correct?

19 MR. BROWNLEE: Correct.

20 COMMISSIONER MURRAY: But it didn't take
21 anything else away that you could do under the school
22 aggregation tariff, did it?

23 MR. BROWNLEE: Well, the -- the one thing it
24 did, it removed any legislative chall-- or court
25 challenges that might have occurred.

1 I mean, this -- this thing was -- it's -- the
2 agreement that's in the format of a tariff now is a
3 compromise that avoids potential litigation. It -- I
4 mean, there's just issues there that -- that I'm not
5 really at liberty -- I mean, it's -- I'm happy to try
6 to explain it, though I'm not doing a very good job, I
7 understand.

8 But it was a -- it's a compromised issue,
9 otherwise there could have been litigation. And this
10 thing -- if we get in litigation or if this tariff, in
11 fact, where we are now suspended that the program is
12 over and it's a dead deal anyway, so --

13 COMMISSIONER MURRAY: You mean, you figured
14 out an agreement that will avoid litigation?

15 MR. BROWNLEE: Well, I -- I think we did,
16 yeah, actually. We're hopeful.

17 COMMISSIONER MURRAY: Some other people would
18 like to talk to you about your writing skills.

19 MR. BROWNLEE: Well, I didn't necessarily say
20 I wrote that if -- if you want -- in my own deference.
21 But you were over there at the Capitol yourself. You
22 know how things happen and they -- sometimes not the
23 art of the perfect.

24 COMMISSIONER MURRAY: All right. Well, I'll
25 let you go to the airport.

1 Thank you, Judge, for letting me do that.

2 MR. BROWNLEE: That wasn't a good answer.

3 Anyway, thank you very much.

4 JUDGE MILLS: Mr. Franson, were you done?

5 MR. FRANSON: Actually, Judge, I was hoping

6 that I could defer to Mr. Sommerer at this point,

7 because I think in response to a question by

8 Commissioner Gaw, Staff gave the impression that

9 they're okay with some things in here that we're not

10 okay with.

11 JUDGE MILLS: Well, let me -- let me ask

12 this: Commissioner Gaw, do you want -- do you wish to

13 hear from Mr. Sommerer on that issue?

14 COMMISSIONER GAW: Okay.

15 JUDGE MILLS: Okay. Mr. Sommerer, why don't

16 you come forward and we'll -- we'll have you take the

17 witness stand.

18 Could you raise your right hand, please.

19 (Witness sworn.)

20 JUDGE MILLS: Thank you. You may be seated.

21 MR. FRANSON: May I proceed, Judge?

22 JUDGE MILLS: You may.

23 DAVID SOMMERER testified as follows:

24 DIRECT EXAMINATION BY MR. FRANSON:

25 Q. Sir, please state your name.

1 A. David Sommerer.

2 Q. Mr. Sommerer, how are you employed?

3 A. I'm employed by the Missouri Public Service
4 Commission.

5 Q. As -- in what capacity?

6 A. I'm the manager of the procurement analysis
7 department.

8 Q. And you have -- now, in the manag-- as manager
9 of the procurement analysis department, what are your
10 general duties?

11 A. Generally to -- to supervise any staff of
12 individuals that reviews on an annual basis the gas
13 purchasing practices of the regulated utilities in
14 Missouri.

15 Q. Now, as part of your -- your expertise in this
16 case, can you articulate Staff's position regarding the
17 tariff changes that may or may not be needed in the
18 proposed tariff?

19 A. Yes. The Staff's main concern was that we
20 viewed the sentence that limited the ability to review
21 the pre-determined capacity levels as being
22 pre-approval.

23 We objected to any sort of pre-approval
24 language. That was the main concern.

25 Q. And what parts of the tariff does Staff

1 support -- or let me rephrase. How -- that Staff -- if
2 the pre-approval was gone, would -- what would
3 Staff -- would Staff have any other problems?

4 A. I think generally speaking, although we had
5 some minor issues about areas that we thought would be
6 improved by clarification, to the extent that the
7 pre-approval language was deleted, the Staff could live
8 with the existing program langu-- language as proposed.

9 Q. In Paragraph E of the tariff -- do you have
10 that in front of you?

11 A. Yes.

12 Q. Okay. Are you familiar that that has been
13 referred to as the 80/20 split?

14 A. That's correct.

15 Q. Please explain your understanding of what this
16 80/20 split is, and Staff's position regarding that?

17 A. The Staff believes that Laclede has made a
18 determination of what it believes is the amount of
19 reserved capacity in Laclede's existing portfolio for
20 the schools.

21 That amount itself is an estimate and is
22 embodied in the language that talks about average daily
23 consumption of participating ESEs in the peak usage
24 month. So at the very start there's been an assumption
25 about what that existing capacity level for the schools

1 was going back in time.

2 Once that level is determined and Staff has
3 not necessarily agreed that that's the appropriate
4 methodology to use to determine the schools' historical
5 capacity, there is a discount applied, the 80 percent
6 level, to allocate the total capacity to the schools
7 for the program.

8 And that, in essence, is done through these --
9 these percentages, 135 percent and 60 percent, which is
10 really no more than breaking down the levels between
11 winter and summer.

12 But, in essence, the -- the baseline
13 calculation does go back to the 80 percent of what
14 the -- Laclede believes was the schools' capacity
15 historically.

16 Q. And ultimately how does Staff -- what does
17 Staff recommend and how does Staff believe that this
18 should be treated procedurally?

19 A. It should be treated as we treat all gas
20 costs. And that is you make good faith estimates in
21 the PGA process -- the purchase gas adjustment process.
22 But those estimates are trued up, they're review and
23 they are analyzed for prudence in a subsequent
24 evaluation in the actual cost adjustment proceeding.

25 So that the Staff does not have a problem with

1 the up-front calculation of the 80 percent. We believe
2 that that may well be a reasonable estimate, and we
3 don't have an alternative to suggest for that estimate.

4 But we would argue that that estimate should
5 be subject to a subsequent review.

6 Q. And is it your belief that the tariff language
7 would preclude such a review -- the tariff language in
8 Paragraph J?

9 A. Yes.

10 MR. FRANSON: I don't have any further
11 questions of Mr. Sommerer, Judge.

12 JUDGE MILLS: Thank you.

13 Commissioner Gaw?

14 QUESTIONS BY COMMISSIONER GAW:

15 Q. Mr. Sommerer, when -- what are you -- what are
16 you referring to when you are referring to the
17 estimate -- an estimate? What are you talking about?

18 A. The estimate that I'm speaking of is contained
19 in Paragraph E in Laclede's proposed tariffs where
20 Laclede is trying to calculate the amount of capacity
21 that will be released and ultimately assigned to the
22 schools -- the participating schools.

23 And it's really composed of two different
24 calculations. One is this idea of compromising at
25 80 percent of what Laclede believes is a historical

1 usage, and the other part of that estimate is the
2 historical usage of the schools itself, and whether or
3 not that usage represents the -- the true amount of
4 capacity that's been reserved for the schools.

5 Q. I'm loo-- I'm looking at Paragraph E right
6 now. Where is that 80 percent figure?

7 A. The 80 percent is actually done through some
8 supporting work papers that Laclede has put together.
9 And it -- it does -- and we don't have an argument with
10 the arithmetic. It does tie back to the 135 percent
11 and the 60 percent percentages.

12 Q. That's in -- and that -- the 135 and the
13 60 are both in Paragraph E of the tariff?

14 A. That's correct.

15 Q. And the -- the 80 percent figure is derived
16 through some additional work that's off the tariff?

17 A. That is also correct.

18 Q. But you're saying there's no dispute about
19 arriving at that figure from the -- from the figures
20 that are in the tariff?

21 A. Correct.

22 Q. Well, what is it that's not verifiable today
23 about -- about this -- about those numbers when you're
24 saying estimate? What's not verifiable today?

25 A. I think if this were the typical situation of

1 evaluating what Laclede's capacity levels were, the
2 Staff would do that in the context of the ACA. And
3 what we don't know today, is what will be the
4 participation of the schools?

5 How many schools will -- will participate?
6 For those particular schools, what's their historical
7 usage, and how will that impact the capacity levels of
8 Laclede?

9 Q. And you would do that -- the -- those -- those
10 checks in an ACA process normally?

11 A. That's correct.

12 Q. And -- and the language in J, you think,
13 precludes you from doing that?

14 A. Yes.

15 Q. Now, do you think that -- that the only way to
16 cure the -- cure the problem in -- in the -- in the
17 tariff is to eliminate that -- that language that's in
18 bold on this exhibit that's been handed to us by Staff
19 Counsel? If -- or if you have an opinion.

20 A. Yes, I do have an opinion, and the answer to
21 that question is yes.

22 Q. You don't think there's any modification of
23 that that would be -- would be acceptable?

24 A. That's correct.

25 Q. Do you dispute the 135 and 60 percent figures

1 in E as being an appropriate way to handle the capacity
2 release and who's responsible for -- or and the school
3 districts' responsibility for -- for assuming the costs
4 of that -- that release in those percentages?

5 A. I think as an up-front estimate it's -- it's
6 fair and it's reasonable. But I'm unwilling to make a
7 judgment on the prudence of that estimate, because of
8 the lack of actual data that's available today.

9 Q. Well, what's going to change about the 135 and
10 60 to make it so that you don't like those figures as
11 time goes on?

12 A. I think as -- as time goes on what we will
13 know is, again, the actual participation, and we'll be
14 able to make an estimate of the actual historical peak
15 day responsibility of the schools.

16 Because really what we have here is almost
17 like a separate class of customers that's being
18 created. It's not an existing class. But we're trying
19 to carve those customers out and figure out what their
20 cost responsibility should be.

21 And I think that the fact that we'll have that
22 actual data, that will be useful in -- in making an
23 evaluation of whether or not the 80 percent number is
24 fair and reasonable.

25 Q. So your Staff isn't even agreeing that the

1 80 percent figure is fair and reasonable?

2 A. That's correct.

3 Q. So we should -- should we go back to just --
4 let's just treat the schools like the large industrial
5 customers and forget about the rest of this?

6 A. Well --

7 Q. Is that what we should do?

8 A. I -- I do have a comment about that. And I
9 think it's the reason why there was an agreement struck
10 between Laclede --

11 Q. All right.

12 A. -- and the schools --

13 Q. Go ahead.

14 A. -- is that -- and this is my understanding not
15 as -- as an attorney, but just reading the statute from
16 my technical background. I believe that the service
17 that would have been offered would have been a basic
18 transportation service, and that term basic is
19 critical. It's almost analogous to interruptible
20 service.

21 I don't know of any schools that would settle
22 for -- responsibly settle for interruptible service
23 where you could be --

24 Q. Because they may not be able to get the
25 service when they need it?

1 A. Exactly.

2 Q. And that's why they -- there was at least some
3 incentive on behalf of the schools to make sure that
4 there was some capacity that was reserved for their
5 benefit?

6 A. I -- I think that is why the schools decided
7 that they would rather not become basic transportation
8 customers.

9 Q. Is that what they would have become under
10 the -- if they were treated as -- as a large industrial
11 customer?

12 A. I think that argument could have been made.
13 From what I can read, the capacity costs that were at
14 question were to be treated just like capacity costs
15 for basic transportation customers.

16 And those customers don't pay capacity costs;
17 however, those customers have an interruptible type of
18 service. And I guess in theory if you were the schools
19 you could argue, well, I want firm service. And that's
20 an underlying theme in this program -- in all five or
21 six tariff sheet's firm service.

22 You could try and argue that you want firm
23 service at interruptible rates. I think there would be
24 arguments against that. And -- and perhaps the Company
25 would have argued it. Maybe they did argue it. But I

1 think that's why the schools probably looked at it
2 and -- and decided, you know, basic transportation
3 service was not the way to go.

4 Q. Well, couldn't they have gone back after this
5 initial -- initial tariff filing in -- without
6 any -- and say, well, this -- this would just be
7 treated like the large industrial customer?

8 Couldn't they have gone back and made that
9 reservation in a separate agreement -- come back and
10 say we want 80 percent. Let's negotiate what it costs
11 us to get the 80 percent or whatever the figure is --
12 whatever the figures they negotiated -- couldn't they
13 have done that?

14 A. I think that's -- that's possible. But,
15 again, you know, Laclede would be responsible for
16 defending the amount of capacity that still existed in
17 its portfolio for the schools. It would be there and
18 all of it would be there.

19 And so Laclede would definitely have a
20 financial incentive to -- to make sure that -- that
21 there was some sort of a fair adjustment in -- in those
22 rates as well.

23 COMMISSIONER GAW: I don't know how you want
24 to handle this, since he's up here, with other parties,
25 Judge.

1 JUDGE MILLS: It -- well, why don't we -- why
2 don't we go ahead and, Commissioner, you conclude all
3 of your questions of anyone you want to. And if anyone
4 wants to re-call Mr. Sommerer for further questions,
5 they can.

6 COMMISSIONER GAW: I'm gonna stop. If you
7 want to go ahead and allow that to happen, because I --

8 JUDGE MILLS: Okay.

9 COMMISSIONER GAW: -- I think it's more
10 appropriate maybe now.

11 JUDGE MILLS: All right.

12 Do any of the parties have questions for
13 Mr. Sommerer based on the questions from the Bench?

14 Actually we're not done with questions from
15 the Bench.

16 Commissioner Murray?

17 COMMISSIONER MURRAY: Thank you.

18 QUESTIONS BY COMMISSIONER MURRAY:

19 Q. Mr. Sommerer, why from Staff's perspective
20 would it matter if the calculations based upon the
21 methodology set out in Section E resulted in, say,
22 actual 75 percent or 85 percent versus the 80 percent
23 that is set out here? Why -- why would that make a
24 difference?

25 A. I think we're talking about a basic subsidy,

1 which the Staff would believe would be inappropriate.
2 If -- if we believe the appropriate amount to assign
3 is -- of capacity costs is \$900,000, and this
4 methodology assigns \$500,000, that \$900,000 is still
5 gonna be paid by Laclede in terms of its con-- contract
6 with MRT.

7 Those costs don't go away. They're still
8 passed through the PGA. The contribution would be
9 \$400,000. And the Staff would say at the time of the
10 ACA, who's gonna pick up this \$500,000? That would be
11 a concern.

12 Q. But if the agreement were not in place, the
13 school boards don't have an obligation under the new
14 law to take any of that capacity; isn't that correct?

15 A. I think that is absolutely correct. But I
16 would add to that that the service -- I think that they
17 might be left with potentially would be an
18 interruptible-type service, which I don't think would
19 be acceptable to the schools.

20 Q. But I -- I guess I'm still trying to
21 understand why it's so critical from Staff's
22 perspective to be able to review whether it actually
23 comes out to be 80 percent or, you know, a few
24 percentage points above or below that. It's -- I don't
25 think Staff has -- I don't hear Staff, anyway, alleging

1 that it will be significantly different than the
2 80 percent figure.

3 And certainly 80 percent is 80 percent better
4 than zero.

5 A. I agree totally with you. And -- and I think
6 going back to something that was discussed earlier is
7 that we're just trying to make this consistent with how
8 we would review a large industrial customer leaving
9 Laclede's system.

10 If we were faced with that particular
11 situation -- a more traditional situation where Laclede
12 had obtained capacity for that customer over the years
13 and the customer decided I'm gonna become a basic
14 transportation customer, what happens to that capacity?

15 Chances are if it's a small amount of capacity
16 and it just gets lost in the noise of the overall
17 system because of growth in St. Charles or reductions
18 in demand in the City of St. Louis, there won't be an
19 adjustment made. And it may not even be looked at very
20 closely if we're not dealing with a significant
21 shutdown.

22 But if you had something like Ford Motor
23 Company and Monsanto and Anhe-- Anheuser-Busch and --
24 large industrial companies with major demands leaving
25 the system, and we knew from our overall company

1 evaluation that those demands had been considered in
2 setting the -- the capacity levels with the interstate
3 pipeline, we would ask Laclede, what did you do? Did
4 you try and negotiate to reduce your contract? Those
5 customers are now buying their own gas and they have
6 their own transportation capacity. Where's that
7 capacity gonna go?

8 Laclede might argue, well, we got a few cents
9 on the dollar in the capacity release market. That may
10 be prudent. If there was no way they could get out of
11 their contract, if it was an unforeseen deal, I agree
12 with Mr. Pendergast. Over the years I can't think of a
13 situation where an industrial customer in St. Louis has
14 left the system -- you know, the sales part of the
15 system and become a basic transportation customer.

16 And we've gone on and said, oops, you've got
17 too much capacity left. We're gonna make a
18 disallowance.

19 I think probably the reason for that is
20 the -- the levels of capacity changes were not
21 significant. And it -- it was either averaged out
22 because of growth or other adjustments in Laclede's
23 capacity level.

24 I do have to say that, if you go back in time,
25 even prior to the procurement analysis department being

1 instituted back in '93, Laclede would have looked at
2 its contract when it had a historical interstate
3 pipeline contract, and it knew that perhaps 10 percent
4 of its customer load was gonna turn into a basic
5 transportation customer.

6 And I think that's -- an excellent thing to
7 think about is -- at some point this did have to
8 happen. Laclede used to be a merchant that did supply
9 everybody their natural gas.

10 And back in the early '90s because of
11 unbundling and per Energy Regulatory Commission
12 Order 636 a certain amount of that load left -- and
13 Laclede was no longer responsible for obtaining that
14 capacity.

15 Did the other customers pay for it, I think
16 it's highly unlikely. I think Laclede adjusted that
17 contract back in the early '90s or it made some sort of
18 conversion. And if that weren't the case, you know,
19 I -- I think there should have been some tough
20 questions asked at that point.

21 And here we have a discreet amount of load and
22 we know up front that we've got 20 percent they're not
23 paying for, even by Laclede's own admission. Laclede's
24 saying, you know, that discount is -- is the best that
25 we could negotiate.

1 So we know that 20 percent is going to be
2 passed to the other customers. That's the only other
3 place that those costs can go.

4 And it may be a little bit more than that if
5 we have a disagreement about how the historical
6 usage -- peak usage was set for those customers.

7 Q. If that -- that part that will be released, is
8 that obtained at a higher cost -- is that capacity
9 reserved at a higher cost under this tariff than it
10 would have -- would have been for a general
11 transportation customer -- basic transportation
12 customer?

13 A. Well, Laclede in theory does not reserve any
14 capacity whatsoever for basic transportation customers.
15 So when we take a look at their coldest day to make
16 sure that they have enough resources in interstate
17 pipeline capacity to meet that coldest day, we simply
18 don't include the load of those large industrial basic
19 transportation customers, because those customers know
20 they're subject to interruption.

21 Q. But because they -- they are having to reserve
22 80 percent of what the school boards have traditionally
23 used; is that correct? They have to have that capacity
24 available under this tariff?

25 A. Could you clarify "they have to have

1 capacity"?

2 Q. Well, Laclede has to make that capacity
3 available.

4 A. Laclede must make that capacity available to
5 those schools, correct.

6 Q. So there's a cost in making sure that that
7 capacity is there, correct?

8 A. There is a historical cost that's imbedded in
9 Laclede's portfolio as part of its overall MRT contract
10 for those schools, yes, that's correct.

11 Q. And you're saying there is no capacity cost
12 for Laclede for basic transportation customers?

13 A. That is correct.

14 Q. And the 20 percent or whatever amount --
15 whatever percentage it amounts to, that gets released.
16 Does Laclede under this tariff have any obligation to
17 re-sell that capacity?

18 A. I don't think they have an obligation, and I'm
19 not even so sure there would be a prudence review
20 associated with it. Because we're dealing with
21 something that -- Laclede kind of has a built-in
22 incentive to release capacity to the extent it can
23 reliably do so.

24 Because as -- as we discussed before, there's
25 been an average amount built into a rate case.

1 Q. Okay.

2 A. And so every dollar that comes in for capacity
3 release absent other -- absent any other provision and
4 tariffs goes to Laclede. So as far as that 20 percent
5 level that would be there that they know they have --
6 they have at least that, they're saying they have that
7 historically for the schools, they can look at it and
8 say, let's see what we can get. Let's see what we can
9 market for that capacity. And that money will go
10 directly to the -- the company.

11 Q. So that is not a part of Staff's concern for
12 maintaining the ability to do a prudence review?

13 A. That's correct.

14 COMMISSIONER MURRAY: Okay. I think that's
15 all I have for this witness.

16 Thank you.

17 JUDGE MILLS: Are there questions from the
18 parties -- cross-examination for Mr. Sommerer?

19 MR. ZUCKER: One or two.

20 JUDGE MILLS: Mr. Zucker?

21 MR. ZUCKER: Should I do it from here or do
22 you want me to --

23 JUDGE MILLS: Why don't you do it from the
24 podium, if you would, please.

25 CROSS-EXAMINATION BY MR. ZUCKER:

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1 Q. Good afternoon, Mr. Sommerer.

2 A. Good afternoon, Mr. Zucker.

3 Q. At the hearing in April, Laclede -- Laclede's
4 tariff provided that -- that Laclede collect and put
5 through the ACA 100 percent of the capacity costs
6 reserved for the schools. Do you recall that?

7 A. That is my recollection, yes.

8 Q. And Staff agreed with -- with our position on
9 that. Do you recall that?

10 A. That's correct.

11 Q. So Staff agreed with Laclede at that time that
12 what we estimated to be 100 percent was, in fact,
13 a -- at least a reasonable estimate of the 100 percent?

14 A. I think at -- at that time we believed that
15 that was a reasonable estimate of the capacity, and
16 Staff did not have an alternative.

17 Q. And what we're referring to as 80 percent
18 today is, in fact, 80 percent of what we were referring
19 to as 100 percent in April. Do you agree with that?

20 A. I generally agree with it, except I do have to
21 clarify -- and this is a pretty important point -- is
22 that the Laclede approach stopped May 31st.

23 And there was a huge contention -- controversy
24 that took place about how long those reservation
25 charges would be applied to the schools. The schools

1 wanted to go back to sale service. That was my
2 understanding after the May 31st.

3 And the way that these rates are being
4 designed it's not like a PGA rate that's applied to
5 every therm of sales. It's more of a fixed charge.

6 And so I think the parties looked at it and
7 decided the schools might be able to avoid -- if
8 they're not paying reservation charges in the summer, a
9 major part of this capacity that we're talking about
10 here.

11 Q. Okay. Well, let -- let me make sure that
12 we're focusing just on pipeline capacity. And let
13 me -- let me ask the question again. Is the current
14 tariff proposal, which says 135 percent and 60 percent
15 of the respective months, equivalent to 80 percent of
16 what we referred to as 100 percent in April?

17 A. I think mathematically that's correct.

18 Q. And so if Staff agreed that 100 percent in
19 April was 100 percent, why would it disagree that
20 80 percent of that 100 percent is not 80 percent?

21 A. Again, we don't have an alternative to offer.
22 Our main point is that there should be some subsequent
23 review of the capacity level that has been reserved
24 over the years for the schools.

25 We don't know what that level is. Laclede's

1 made an estimate of what that level is, and the Staff
2 didn't disagree with that estimate.

3 But I think it becomes a more important point
4 to Staff when you recognize that you have an estimate
5 in tariffs that you can't subsequently review.

6 So I believe we adopted that -- that estimate
7 as being a good-faith guess of what the appropriate
8 capacity was in terms of that historical reserved
9 amount.

10 Q. So is what you're saying that -- then, that as
11 a -- a good-faith guess of 100 percent -- well,
12 80 percent of a good-faith guess of 100 percent is not
13 a good-faith guess of 80 percent?

14 A. Well, certainly the -- the 80 percent is going
15 to be applied to the same methodology and the same
16 level as the 100 percent. And I agree with you that
17 average daily consumption in a peak usage month was the
18 philosophy or the methodology that was used back in
19 April.

20 I guess what I'm suggesting is, is that Staff
21 in terms of buying into that methodology and reviewing
22 it in great detail did not do that. And I would say
23 that we believe we have the right to take a closer look
24 at that in the actual cost adjustment.

25 But again, the Staff was fully supportive of

1 that language back in April. It was the only
2 alternative that was offered. And we believe that it
3 represented at least on an up-front basis a reasonable
4 way of charging the schools for that capacity.

5 Q. Okay. You -- you referred to the schools as
6 not wanting to buy interruptible capacity. Is -- isn't
7 it the case that they could go to the -- the capacity
8 release bulletin boards and buy firm pipeline capacity?

9 A. That is an option to the extent that the
10 capacity is available, and it's available on the
11 type -- types of terms that the school would need that
12 capacity.

13 Q. Okay. And they are -- according to
14 Section E of our tariff, the schools will pay us the
15 maximum rate for the capacity that they're buying.

16 Certainly they wouldn't have to pay more than
17 that were they to go to the -- the pipeline bulletin
18 boards; is that correct?

19 A. To the best of my knowledge, that's correct.
20 I know that FERC did have some time periods, and
21 perhaps it was limited to some pipelines, where there
22 could be negotiated rates that even exceeded the FERC
23 maximum rate.

24 But as far as MRT is concerned, to the best of
25 my knowledge, I think the limitation would be the FERC

1 maximum rate.

2 Q. Okay. We -- we've agreed that the 80 percent
3 is an estimate. Do you have any reason to believe that
4 to the extent that the -- the actual capacity is
5 different from 80 percent that it's either more or
6 less?

7 A. No.

8 Q. Okay. So, for example, if it was actually
9 82 percent, then the remaining customers would only be
10 picking up 18 percent rather than 20; is that correct?

11 A. If I understand your hypothetical, I -- I
12 think that's correct. You're saying that if the actual
13 allocation was 82 percent, but the true percentage was
14 100 percent, then the 18 percent would be the subsidy.

15 Q. Okay. One more area to go into. You talked
16 about -- that your -- that your -- your prudence review
17 would not include what -- how Laclede marketed any
18 extra capacity, because Laclede is already incented
19 (sic) to -- to market that capacity; is that correct?

20 A. Yes, that's correct.

21 Q. Okay. If you look at the numbers again in
22 Section E, the 135 percent and 60 percent, would you
23 agree with me that the vast majority of the discount
24 given to the schools is in summer capacity?

25 A. I -- I couldn't agree with that without

1 further studying the -- the derivation of those --
2 those numbers. I mean, it's a different type of rate
3 design than what's typical for the schools. The
4 schools normally pay their fixed reservation charges as
5 part of the PGA rate.

6 And what we have here is a way mathematically
7 to get back to the 80 percent. And I think the -- the
8 percentages could be different. The original
9 percentage was 150 percent.

10 And, in fact, it even goes farther back than
11 that. The original percentage was 114 percent. And
12 this was Laclede's view, that the capacity associated
13 with the schools' historical levels that Laclede had
14 acquired over the years was approximately 114 percent
15 in terms of a comparison between the peak day month and
16 the capacity -- the total system capacity.

17 And Laclede took that. And because the
18 schools, I think, bought into the 150 percent, at least
19 in terms of the winter months, did some calculations so
20 that the overall amount would be 114 percent in terms
21 of a ratio or an assignment.

22 But the bottom line was you would get back to
23 the original number. But you could generate a higher
24 number in the winter and a lower number in the summer,
25 so --

1 Q. I guess, Mr. Sommerer, let me inter--
2 interrupt you for a second and pick up a point that you
3 made in order to -- for interest of time just to try to
4 make my point.

5 You -- one thing you said was that our
6 customers generally buy the same level of pipeline
7 capacity all year round; is that correct?

8 A. On a systemwide basis, Laclede's contracts
9 with MRT are generally year-round capacity.

10 Q. Right. All at the same level. So you're
11 buying the same amount of capacity -- the customers are
12 paying for the same amount of capacity in the summer
13 when they're not using much as they're paying in the
14 winter?

15 A. I would say Laclede's paying MRT the same
16 amount of capacity, because that's how the bill is
17 designed. It's a fixed charge. I'd say the customer
18 pays very little in the summer. The customer probably
19 pays 90 percent of their fixed charges in the months of
20 November through March.

21 Q. Good point. La-- Laclede is paying for it
22 that way; Laclede is paying for it in -- in the winter
23 and the summer --

24 A. Correct.

25 Q. -- correct?

1 Okay. So here Laclede is now in -- in -- in
2 releasing it to the schools, they're releasing
3 60 percent or 75 percent less than the 135 percent that
4 they're releasing in the winter?

5 A. Yeah, I'd say that the capacity that's being
6 released is a great deal less than the capacity that's
7 being assigned in the winter.

8 Q. And so --

9 A. I would agree with that.

10 Q. And so a great deal of the capacity left over,
11 then, is going to be summer capacity. Would you agree
12 with that?

13 A. Yes, I would.

14 Q. And -- and would you also agree that it's very
15 difficult to market summer capacity, because there's
16 not that much demand for -- for a gas heating in the
17 summer?

18 A. All other things being equal, I would say that
19 tends to be the case, although capacity release is
20 gonna vary depending upon whether it's recallable or
21 not or whether there's some sort of a long-term deal
22 with the gas generation unit.

23 So there are unique circumstances, but
24 generally speaking, capacity release recallable, which
25 is --

1 Q. Would -- would you agree with me that it's
2 likely that Laclede is already releasing as much summer
3 capacity as -- as it can?

4 A. I think at least based upon actual cost
5 adjustment audits that have been completed, we did not
6 find any instances where Laclede had the opportunity to
7 release and failed to do so.

8 Q. So -- so, therefore, tying it all together,
9 the remaining capacity after the schools pay for this
10 135 and 60 is going to be mostly summer, which is not
11 going to be very marketable. So there's not going to
12 be a lot to market there. Would you agree with that as
13 a basic concept?

14 A. I would say that's very likely.

15 MR. ZUCKER: That's all I have.

16 Thank you.

17 JUDGE MILLS: I think at this point we'll take
18 a -- a five-minute recess. The Commissioners have to
19 be in another meeting, and I need to chat with them
20 about where we're gonna go from here, so --

21 MR. FRANSON: Judge, could I ask one question
22 of Mr. Sommerer? And then I won't have any further
23 proceedings with Mr. Sommerer.

24 JUDGE MILLS: You can when we come back.

25 MR. FRANSON: Okay.

1 JUDGE MILLS: We're -- we're gonna go off the
2 record for five minutes.

3 (A RECESS WAS TAKEN.)

4 JUDGE MILLS: We'll go back on the record.
5 Mr. Sommerer, you can take the stand again. I'll
6 remind you you're still under oath.

7 Mr. Wenzel, Mr. Micheel, did either of you
8 have questions for Mr. Sommerer.

9 MR. WENZEL: No, Your Honor.

10 MR. MICHEEL: No, Your Honor.

11 JUDGE MILLS: Okay.

12 Mr. Franson, go ahead.

13 MR. FRANSON: Yes. Thank you.

14 REDIRECT EXAMINATION BY MR. FRANSON:

15 Q. Mr. Sommerer, in the tariff that is currently
16 in effect that had the 100 percent number, was there a
17 pre-approval language in that tariff?

18 A. Not in my opinion, no.

19 Q. At least none that's like the -- in the
20 proposed tariff before the Commission today?

21 A. That's correct.

22 MR. FRANSON: No further questions, Your
23 Honor.

24 JUDGE MILLS: Okay. Thank you.

25 Is there anything further from the Bench for

1 Mr. Sommerer?

2 (No response.)

3 JUDGE MILLS: Okay. Mr. Sommerer, you may
4 stand down.

5 (Witness excused.)

6 JUDGE MILLS: Okay. I've -- I've got a few
7 questions. And let -- let me see if I can pursue this.
8 And this is for -- for either Mr. Zucker or probably
9 for Mr. Pendergast, either of you.

10 You had some questions -- there was a series
11 of questions by Commissioner Gaw about specifically the
12 language in Paragraph J that Staff and Public Counsel
13 have objected to.

14 And after some questioning by
15 Commissioner Gaw, it appeared that -- that the general
16 objections of Staff and Public Counsel were to the fact
17 that there were po-- there could possibly be imprudent
18 actions or actions that should have been take -- that
19 prudently have been taken that were not taken with
20 respect to that 20 percent.

21 Would Laclede consider adding to the tariff
22 simply a clause that said -- it currently says, the
23 company shall not be required to absorb the costs of
24 any pipeline capacity released.

25 Would Laclede object if that clause was

1 modified by saying something to the effect that so long
2 as Laclede takes all prudent actions and doesn't take
3 any imprudent actions with respect to that
4 20 percent?

5 Would a modification to that clause be
6 something Laclede would consider?

7 MR. PENDERGAST: Yeah, I -- I -- I guess my
8 reservation about -- about agreeing to that language is
9 that it -- it is not clear to me exactly what would be
10 expected of us.

11 You know, prudence is a pretty broad concept.
12 And one can raise a lot of different arguments as to
13 what it means to prudently take those kind of steps
14 with respect to that capacity.

15 I mean, does it mean that you will go ahead
16 and -- and do your best to release it? If
17 that's -- and to -- to obtain as much for it as you
18 can. If that's the case, then I think, as Mr. Micheel
19 and -- and -- and Mr. Sommerer have already testified,
20 we have an incentive to do that.

21 And -- and consequently, you know, it
22 shouldn't be directed at that. And if it's directed at
23 something else, then I'm not sure what it would be, and
24 it would give me pause to -- to -- to agree to it.

25 JUDGE MILLS: Okay.

1 Mr. Micheel, let me ask you the same question.
2 Would -- would that kind of a qualification so that --
3 so that Laclede's actions aren't completely
4 unchallengeable, but rather could be challenged on the
5 basis of imprudence with respect to that 20 percent --
6 would that alleviate your concerns?

7 MR. MICHEEL: Partially. But it -- it's a
8 step in the right direction, but I don't think it
9 alleviates my concerns completely, Your Honor.

10 JUDGE MILLS: Okay. Not enough so that you
11 would remove your objections to the tariff?

12 MR. MICHEEL: Not at this time, because there
13 would still be an aspect of pre-approval and that's
14 just something that -- as a policy manner, our office
15 is not prepared -- I mean, I'd have to talk to folks,
16 but I don't think our office is prepared to agree to
17 any sort of pre-approval, Your Honor.

18 JUDGE MILLS: Okay. All right. Well, let
19 me -- let me ask this of -- of -- of you, Mr. Micheel.
20 Is it -- from my perspective it seems as though the --
21 you know the -- the negotiation that resulted in the
22 school boards paying for 80 percent of this capacity
23 versus zero may be a pretty good deal.

24 Now, I under-- I understand that the principle
25 objection is to pre-approval. But in this instance

1 aren't -- aren't you taking those eight birds in the
2 hand and throwing them back because there might be
3 two more birds in the bush that -- that you might seek
4 at some other point?

5 MR. MICHEEL: Well, I see that -- that that's
6 a possibility. I -- I mean, the -- this agreement was
7 negotiated between Laclede and -- and the school boards
8 and presented to me for my blessing -- what -- what I
9 thought.

10 And -- and I expressed to the parties prior to
11 the filing that the only problem that we had that I saw
12 initially was the pre-approval.

13 So not -- not having a crystal ball to know
14 what they're gonna do if this thing is denied, I -- I
15 can't say. I -- I do agree with you, Your Honor, that
16 right now we do have the -- the at least 80 percent
17 commitment, assuming their -- their estimates are
18 correct.

19 JUDGE MILLS: Right. Okay.

20 Mr. Franson, how do you respond to that
21 question?

22 MR. FRANSON: Well, first of all, as
23 Mr. Micheel pointed out, and very accurately, this deal
24 that was struck between the schools and Laclede was
25 presented to us, and we didn't have any input on it.

1 It -- the language you suggested would be a
2 step in the right direction, but it still is
3 pre-approval, and it is still asking Staff, will we buy
4 off on the 20 percent being passed on to other
5 customers? The answer is still no.

6 That is a policy decision that ultimately
7 needs to be made in an ACA proceeding by the
8 Commission.

9 JUDGE MILLS: Okay.

10 MR. FRANSON: And --

11 JUDGE MILLS: Well, let me -- let me ask you
12 this: If -- and -- and this is assuming a couple of
13 things. But if the Commission doesn't approve these
14 tariffs as -- as provided and instead Laclede turns
15 right around and files a tariff that says, you know,
16 something -- the other alternative in the statute,
17 which that the schools are not responsible for any
18 capacity, and the schools jump on that.

19 So it turns out that, you know, in the next
20 ACA period, there's a great deal of capacity that the
21 schools had in the past paid for that -- that, in turn,
22 was released and Laclede is uncompensated for, would
23 Staff be arguing that -- that -- that Laclede should be
24 required to absorb anything in the -- even in the
25 neighborhood of 80 percent of those costs?

1 MR. FRANSON: Judge, I think there's some
2 fundamental problems with your question.

3 JUDGE MILLS: Okay.

4 MR. FRANSON: Because as the -- as was
5 explained by Mr. Sommerer, if the -- Laclede's
6 interpretation appears to be that the schools have a
7 choice to strike an agreement with us, which they did,
8 and get firm capacity or go out and be a basic
9 transportation and be an int-- an interruptible
10 customer.

11 The schools most likely reasonably can't do
12 that. Because if they do, they're subject to being cut
13 off. They are interruptible. They're not gonna have
14 service, period.

15 That -- I don't think there could be any
16 reasonable argument is a reasonable way to run a
17 school. When you are running a school, you have to be
18 able to heat your school building on cold days.

19 So -- but getting back to your question,
20 if -- if they the school somehow had firm
21 transportation available and it's -- and that's the
22 choice, which Staff would submit it's not -- but if
23 that is the choice, then you still have an element of
24 pre-approval and pre-supposition of prudence that is
25 still a problem. And Staff is still troubled by that.

1 Staff does not believe it's an accurate
2 portrayal. It's either they pay 80 percent or they pay
3 zero. If they pay zero, they are interruptible basic
4 transportation customers, and they don't have firm
5 capacity. And they may not be able to heat their
6 school buildings on the days they need to.

7 So Staff would submit it's not an either/or
8 proposition. It's been put that in the fir-- in the
9 tariff that was approved and supported by all the
10 parties, there was no element of pre-approval. Laclede
11 had the protection of the statute they weren't gonna
12 absorb costs.

13 Now we've got a part of the costs that have to
14 be absorbed by somebody, and Laclede knows under the
15 statute they don't get that protection, so their answer
16 is pre-approval.

17 And Staff is very troubled by that and does
18 not agree to it. And it is just not an either/or
19 proposition.

20 JUDGE MILLS: I -- now, I understand the --
21 the trouble in principle and it -- it -- but it seems
22 to me that it's at least likely that your principles
23 are likely to -- and -- and upholding your principles
24 in this case are -- are possibly going to cost
25 ratepayers more money than -- than were you not to

1 follow -- were the -- were the Commission not to follow
2 those principles.

3 MR. FRANSON: Well, Judge, I'm not sure.
4 Because Mr. Brownlee did not say, Judge, you know,
5 the -- we negotiated this in good faith. We support
6 it.

7 But if he -- if the Commission votes it down,
8 we have an alternative. The answer was, there is no
9 alternative. Mr. Brownlee clearly told you in both the
10 pleading and today. It's this or there is no program
11 this year.

12 And that would be a strong indication. And
13 Mr. Sommerer is exactly right that the schools have
14 something to gain from this agreement. They're here.

15 They did not out of the goodness of their
16 heart decide to -- to offer and pay the amount of
17 80 percent or whatever the number may turn out to be.

18 They have an incentive. And that is, they
19 aren't gonna have a program if they don't do this deal.
20 The -- the problem is there is an element that is not
21 there. So actually probably the real option is it's
22 this deal or there is no program.

23 It's not 80 percent pay or -- or zero. I -- I
24 don't believe that that's an accurate way of portraying
25 it, because there -- there -- there will be no program,

1 and it's -- from what the schools have represented.

2 JUDGE MILLS: Okay. Mr. Pendergast, Mr. --
3 Mr. Zucker, is that -- is that -- do you think that's
4 accurate?

5 MR. PENDERGAST: Do I -- do I think his last
6 statement is accurate?

7 JUDGE MILLS: Let me ask you this: If the
8 Commission in a very relatively -- well, not
9 relatively -- in a very quick fashion buys into the
10 arguments of -- of Staff and Public Counsel and rejects
11 this tariff, what's -- what's Laclede's next step?

12 MR. PENDERGAST: Well, our next would be --
13 because I think we'd need to be somewhat responsive to
14 the statute -- would be to go ahead and file another
15 tariff that basically says these folks would be treated
16 just like basic transportation customers.

17 And what that would entail would be basically
18 saying that we don't have any obligation to provide
19 them with any capacity, and they don't have any
20 obligation to take any capacity from us. We don't have
21 any obligation to flow those through immediately if we
22 should strike a deal with them.

23 And I guess the -- the question is if -- if we
24 don't have an agreement approved as it's set forth in
25 the tariff, a couple of things could happen. The

1 schools could say, well, you know, it's just too late
2 in the process. I can't find any firm capacity from
3 somebody else, and so I'm not gonna go ahead and do
4 anything. And they'll just remain sales customers.
5 Then we won't have to worry about this kind of
6 contribution thing.

7 Another alternative is they could come to
8 Laclede and say just like a basic transportation
9 customer, I want you to go ahead and arrange for
10 transportation with me. And we could perhaps go ahead
11 and strike a deal with them -- some pre-approved deal.
12 And put it up for the bulletin board and see if that
13 gets outbid by anybody.

14 And if it didn't, then we would get at least
15 80 percent if we had the same deal when we got bid.
16 But instead of flowing it back to our customers, we
17 would go ahead and keep it in between rate cases.

18 And I think those are the alternatives. So
19 if -- if -- if the schools have indicated that -- that
20 if this isn't approved in its current form, they may
21 not go forward with it. You know, I'm in no position
22 to go ahead and second guess the schools.

23 I'm just telling you that I think those are
24 what the alternatives could be. And those were
25 certainly what the alternatives were that we were

1 looking at when we negotiated what I think both Staff
2 and Public Counsel were saying, you know, was -- was a
3 pretty good deal.

4 JUDGE MILLS: Mr. Wenzel, what's your
5 response? If -- if the Commission on an expedited
6 basis rejects these tariffs, what do you do next?

7 MR. WENZEL: Your Honor -- Your Honor, not
8 being here and hearing Mr. Brownlee's comments and the
9 testimony previously, it's my understanding that just
10 because of the timing and so forth that the program
11 could not go forward. The School Boards Association
12 could not participate and would not be able to be
13 involved.

14 JUDGE MILLS: Okay. You wouldn't -- you
15 wouldn't make an effort over the next couple of days to
16 try and reach some alternative agreement?

17 MR. WENZEL: In a very short time frame, you
18 know, if we're talking two or three days possibly. But
19 beyond that, I don't think we could do it.

20 JUDGE MILLS: Okay. That's all the questions
21 I have. I believe that's all the questions from the
22 Bench. And I think that probably concludes our hearing
23 for today.

24 Is there anything further from the parties
25 before we go off the record?

1 MR. PENDERGAST: No. Thank you very much.
2 JUDGE MILLS: We're off the record.
3 WHEREUPON, the question and answer session was
4 concluded.
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