

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

In the Matter of Laclede Gas Company's )	
tariffs designed to permit early )	
implementation of Cold Weather Rule )	Case No. GT-2009-0026
provisions and to permit Laclede to )	Tariff number JG-2009-0033
collect the gas cost portion of its write- )	
off's through the PGA )	

**STAFF'S INITIAL POST-HEARING BRIEF**

**COMES NOW** the Staff of the Missouri Public Service Commission ('Staff'), by and through its General Counsel pursuant to § 386.071, RSMo.,<sup>1</sup> and Commission Rule 4 CSR 240-2.040(1), and for its Initial Post-Hearing Brief, states as follows:

**Introduction**

On July 9, 2008, Laclede Gas Company (Laclede or Company) filed tariff sheets designed to change the way Laclede collects its operating costs relating to bad debt expense by including an estimate of gas-cost-related uncollectibles in the Purchased Gas Adjustment (PGA).<sup>2</sup> The PGA is part of the process by which Laclede recovers the cost of gas from its customers by passing it through to them in rates.<sup>3</sup> Laclede's

---

<sup>1</sup> All references to the Revised Statutes of Missouri (RSMo) are, unless otherwise specified, to the revision of 2000.

<sup>2</sup> The tariff sheet also requested Laclede be permitted to implement cold weather rule requirements early. This suggested change is now moot because the heating season began November 1, 2008.

<sup>3</sup> See ***State ex rel. Associated Natural Gas Co. v. PSC***, 954 S.W.2d 520, 523 (Mo. App., W.D. 1997): "In addition to the basic rates which ANG charges its customers, ANG can also recover from its customers the costs which it incurs in obtaining gas from its own suppliers. These additional charges are recovered through a two-part mechanism known as a purchased gas adjustment/actual cost adjustment (PGA/ACA) process. In the first half of this process, which is known as the PGA, ANG files annual tariffs in which it estimates its cost of obtaining gas over the coming year. This part of the process is prospective or forward-looking, and the PGA amounts are then included in the customers' bills over the ensuing twelve months. In the second half of the process, ANG submits ACA filings, which are meant to correct any discrepancies between the PGA amounts which were prospectively billed to ANG's customers and the costs which, in retrospect, ANG actually incurred in obtaining gas from its suppliers."

proposed tariff sheets, which would alter rates outside of a general rate case, are unlawful and must be rejected.

Staff's Initial Post-Hearing brief follows the list of issues established for the hearing.

### **Discussion**

#### **1. Can the Commission lawfully permit Laclede to recover the gas portion of its uncollectible revenues (bad-debt expense) through the PGA/ACA process?**

No. The bad debt expense at issue here is not the sort of operating cost that may be included in the PGA because it is not similar to the gas commodity and transportation costs that are passed through to ratepayers in the PGA. The Missouri Supreme Court has held that the Commission is authorized “to deal with an item of operating expense in a different manner than other such items as part of a pattern or design to accomplish a just and reasonable total charge to the public for [utility] service.”<sup>4</sup> However, “such separate treatment must be effectuated in compliance with all of the statutes governing the PSC and with the purpose behind those statutes.”<sup>5</sup> In particular, the item of expense that receives different treatment must “in fact [be] different in kind from other expenses.”<sup>6</sup>

#### ***Bad debt expense does not qualify for recovery through the PGA:***

The bad debt expense at issue here is not different in kind from Laclede's other operating costs and is not similar to the gas costs that are included in the PGA. “The

---

<sup>4</sup> *State ex rel. Hotel Continental v. Burton*, 334 S.W.2d 75, 79 (Mo. 1960).

<sup>5</sup> *State ex rel. Utility Consumers' Council of Missouri, Inc. v. PSC*, 585 S.W.2d 41, 53 (Mo. banc 1979) (“*UCCM*”).

<sup>6</sup> *State ex rel. Midwest Gas Users' Ass'n v. PSC*, 976 S.W.2d 470, 479 (Mo. App., W.D. 1998) (“*MGUA*”).

gas costs which the PGA mechanism allows the companies to pass on are almost entirely the cost of obtaining the gas itself.”<sup>7</sup> Despite some deregulation, “[m]any of the costs included in a PGA clause are . . . still mandated by FERC; the only issue is who will pay them, not how much will be paid.”<sup>8</sup> Bad debt expense is not a cost that Laclede incurs in acquiring gas.<sup>9</sup> Bad debt expense is more like “the type of labor and material costs used in making electricity” that were rejected for pass-through treatment by the Missouri Supreme Court in **UCCM** because the company could offset them by economizing in other areas of its operations.<sup>10</sup>

With bad debt expense, the issue is very much how much will be paid. Laclede can only make an estimate of its uncollectible expense.<sup>11</sup> With bad debt, there is no bill or invoice showing the amount that must be recovered, instead, Laclede proposes to use a formula to determine the level of bad debt.<sup>12</sup> The use of such a formula was rejected by the Court in **UCCM** as a violation of the Filed Rate Doctrine.<sup>13</sup>

Bad debt expense may not be recovered in the PGA because it is not different in kind from Laclede’s other operating costs. Unlike the commodity and transportation costs of natural gas, the amount is not set by an external agency. It is subject to offset by economizing efforts elsewhere in Laclede’s operations and, in particular, may be reduced by the amount of effort Laclede devotes to collections.

---

<sup>7</sup> *Id.*, at 482.

<sup>8</sup> *Id.*

<sup>9</sup> Tr. p. 76, ll. 14-18; Tr. p. 77, ll. 3-12; Tr. p. 82, ll. 6-10; Tr. p. 84, ll. 6-20.

<sup>10</sup> *Id.*; **UCCM**, *supra*, 585 S.W.2d at 47.

<sup>11</sup> Tr. p. 135, ll. 24-25.

<sup>12</sup> Tr. p. 134, ll. 21-25.

<sup>13</sup> **UCCM**, *supra*, 585 S.W.2d at 57.

***The Hotel Continental standards:***

In ***Hotel Continental***, the Court described and limited the types of expenses the Commission could approve for special treatment.<sup>14</sup> The Court established strict standards for the types of operating expenses the Commission could treat differently without violating its duties under § 392.240.1, RSMo., to assure just and reasonable rates.<sup>15</sup> Bad debt expense does not meet the court's criteria.

• ***Different treatment will not alter the utility's rates or rate of return:***

The Commission may treat an item of expense differently where such treatment does not alter the utility's rates or rate of return. The taxes considered in ***Hotel Continental***, for example, passed straight through "to the local taxing authority."<sup>16</sup> The unique treatment of tax expense was permissible because the company's "rates and rates of return stayed the same."<sup>17</sup>

[The Commission's] order does not permit the *company* to increase or decrease its rates. Any such increase or decrease is directed by the *commission's* present [rate case] order made after a full hearing and no future act or inaction of the *company* can change the effect of that order. (emphasis in original).<sup>18</sup>

In contrast, the bad debt expense at issue here would flow to Laclede and not merely pass through the company and on to a local government authority; furthermore, approval of this tariff would change Laclede's rates.<sup>19</sup>

---

<sup>14</sup> ***Hotel Continental***, *supra*, 334 S.W.2d 75.

<sup>15</sup> *Id.* at 81-84.

<sup>16</sup> *Id.*, at 80.

<sup>17</sup> *Id.*, at 82.

<sup>18</sup> *Id.*, at 81.

<sup>19</sup> Tr. 137-141.

- ***The expense given different treatment may not be offset by other savings:***

A second factor the Court considered was whether a particular item of operating expense might be offset by savings in another expense. The Court pointed out that this is “the reason why the PSC is not to consider some costs in isolation -- because it might cause the PSC to allow the company to raise rates to cover increased costs in one area without realizing that there were counterbalancing savings in another area.”<sup>20</sup> With respect to the PGA, the court stated, “[t]he gas costs which the PGA mechanism allows the companies to pass on are almost entirely the cost of obtaining the gas itself; they do not include the type of labor and material costs used in making electricity.”<sup>21</sup>

- ***The expense given different treatment is not within the utility’s control:***

The utility’s control over the cost is another one of the factors the Court discussed in determining what costs are recoverable through the PGA.<sup>22</sup> “[B]ecause the costs at issue in the FAC in ***Utility Consumers’ Council*** were subject to the control of the utilities, and included labor costs and other costs of producing the electricity, and because the Court believed that the amount of money spent for fuel might affect the bottom line and could be offset by savings in other areas, the FAC was not approved.”<sup>23</sup>

In approving the PGA, Judge Stith reasoned that wholesale gas costs may receive special treatment, like the taxes in ***Hotel Continental***, because the utility has limited control over wholesale costs: “at the time use of a PGA clause was first

---

<sup>20</sup> ***MGUA***, *supra*, 976 S.W.2d at 480. See Tr. 127-128 for a discussion of which operating costs have increased and decreased recently for potential “counterbalancing savings.”

<sup>21</sup> *Id.*, at 482.

<sup>22</sup> *Id.*, at 480.

<sup>23</sup> *Id.*

adopted, the gas companies had no control over their fuel costs.”<sup>24</sup> Unlike taxes and natural gas commodity costs, the level of bad debt expense may be influenced by the company’s actions.<sup>25</sup>

Bad debt costs are largely within the control of the utility through, among other things, aggressive debt collection,<sup>26</sup> credit scoring,<sup>27</sup> longer hours for collection,<sup>28</sup> tracking customers through social security numbers,<sup>29</sup> requirement of a deposit,<sup>30</sup> and proper management of its service shut-offs.<sup>31</sup> Bad debt expense is a cost of doing business, like payroll, work vehicles and equipment, and insurance, which are all included in base rates.<sup>32</sup> These are all costs over which Laclede has substantial control.

- ***The expense given different has been considered in a general rate case:***

In *Hotel Continental*, the Court held that the Commission may determine in a rate case that some items of operating expense require different treatment in order to reach a just and reasonable result:

[T]he commission's express statutory power to determine and prescribe just and reasonable rates and to determine what rates will permit a fair return, includes the power to determine what items should be included in a utility's operating expense and what items should be excluded, and how excluded items, if any, should be handled and treated, in order that the

---

<sup>24</sup> *Id.*, at 482.

<sup>25</sup> Tr. p. 172, l. 17 – p. 173, l. 15.

<sup>26</sup> Tr. 42, ll. 2-5 and 9-13; Tr. p. 51, ll. 4-9, p. 52 ll. 25 - p. 53, l. 2.

<sup>27</sup> Tr. 119, ll. 11-13.

<sup>28</sup> Tr. 120, ll. 9-16.

<sup>29</sup> Tr. 12, ll. 6-8.

<sup>30</sup> Tr. 172, ll. 9-11.

<sup>31</sup> Tr. 172, l. 17 – p. 173, l. 15.

<sup>32</sup> Tr. 185, ln. 25 - p. 186, ln. 5.

commission may arrive at a reasoned determination of the issue of 'just and reasonable' rates.<sup>33</sup>

**Conclusion:**

The Commission is authorized to treat items of operating expense differently as may be necessary to reach a just and reasonable result. However, the items accorded different treatment must, in fact, be of a different nature than other items of operating expense. Taxes and natural gas commodity and transportation costs are examples of expenses that are different in kind because they are amounts set by an independent entity; they are not within the utility's control; and they are not subject to offset by economizing elsewhere in the utility's operations. Bad-debt expense is not like taxes or wholesale gas costs because bad-debt expense is subject to utility control and subject to offset. Consequently, bad-debt expense is not subject to different treatment such that it can be collected through the PGA.

**2. If the answer to No. 1 is "yes," then can the Commission permit Laclede to recover the gas portion of its uncollectible revenues (bad-debt expense) through the PGA/ACA process by modifying its PGA/ACA tariff outside of a general rate case?**

Staff answered "no" to Issue No. 1.

Furthermore, Staff points out that approval of Laclede's proposed tariff sheets outside of a general rate case would violate Missouri's well-established prohibition against single-issue ratemaking.

---

<sup>33</sup> *Hotel Continental, supra*, 334 S.W.2d at 80.

In setting just and reasonable rates for the services of investor-owned utilities, the Commission is required to consider all relevant factors.<sup>34</sup> Failure to do so constitutes single-issue ratemaking.<sup>35</sup> In the present case, Laclede has proposed tariff sheets, outside of a general rate case, that would, if approved, change the rates to be paid by its customers. One point mentioned by the *MGUA* Court in approving the PGA/ACA mechanism was that the mechanism is considered and approved by the PSC in a general rate case:

When the PSC undertakes a general ratemaking proceeding, it considers whether to allow a PGA. The fact that a PGA is part of the rate is taken into consideration by the PSC in setting the rate approved during the rate case.<sup>36</sup>

The Commission simply cannot lawfully do what Laclede is here requesting.

**3. If the answer to Nos. 1 and 2 are “yes,” then should the Commission permit Laclede to recover the gas portion of its uncollectible revenues (bad-debt expense through the PGA/ACA process?)**

Staff answered “no” to Issues No. 1 and 2.

Staff also answers “no” to Issue No. 3. What Laclede proposes here is bad policy because it reduces Laclede’s incentive to implement effective measures to control and collect bad-debt. It is bad policy because it transfers the risk of non-collection to Laclede’s other customers. It is fundamentally unfair to allow Laclede to require its paying customers to subsidize those who do not pay.

---

<sup>34</sup> *UCCM*, *supra*, 585 S.W.2d at 47.

<sup>35</sup> *MGUA*, *supra*, 976 S.W.2d at 479; *State ex rel. Missouri Water Co. v. PSC*, 308 S.W.2d 704, 718-720 (Mo. 1957).

<sup>36</sup> *MGUA*, *supra*, at 480.



It is also bad policy because Laclede's base rates, set in its last general rate case, Case No. GR-2007-0208, already include an allowance for uncollectibles. Laclede witness Cline testified that bad-debt expense recovery is already "built into" the Company's existing rates.<sup>37</sup> It is fundamentally unfair to allow Laclede a double recovery.

**WHEREFORE**, by reason of all the foregoing, Staff prays that the Commission will reject Laclede's proposed tariff sheets that would permit it to collect bad-debt expense through the PGA/ACA mechanism.

Respectfully submitted,

/s/ Kevin A. Thompson  
Kevin A. Thompson  
General Counsel  
Missouri Bar Number 36288

Lera L. Shemwell  
Deputy General Counsel  
Missouri Bar No. 43792

Attorneys for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-6514(Telephone)  
(573) 526-6969 (Fax)  
kevin.thompson@psc.mo.gov

#### **Certificate of Service**

I hereby certify that true and correct copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this **13<sup>th</sup> day of February, 2009**.

/s/ Kevin A. Thompson

---

<sup>37</sup> Cline Direct, p. 4, ll. 3-6.