

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

In the Matter of Laclede Gas Company's)	
Tariff Revision Designed to Clarify its)	Case No. GT-2009-0056
Liability for Damages Occurring on)	Tariff No. JG-2009-0145
Customer Piping and Equipment.)	

PUBLIC COUNSEL'S POSITION STATEMENT

COMES NOW the Missouri Office of the Public Counsel and for its Position Statement states as follows:

The parties agreed that the issue to be determined by the Commission is whether Laclede's liability tariff proposal is just and reasonable. Public Counsel offers the following brief summary of Public Counsel's position and separately addresses the issue of whether the tariff proposal is lawful from the issue of whether the tariff proposal is reasonable.

1. Lawfulness

a. Unlawful to Limit Liability from all Forms of Negligence

The authority granted to the Commission by the Missouri Legislature does not include the authority "to determine damages, award pecuniary relief, declare or enforce any principle of law or equity." The Commission "is an administrative body created by statute and has only such powers as are expressly conferred by statute and reasonably incidental thereto." Approving the proposed tariffs and limiting a consumer's ability to make legal and equitable claims in a court of law when Laclede has acted negligently would be an unlawful declaration of a principle of law and equity, and would go beyond the jurisdiction and authority of the Commission.

b. Unlawful to Impose Liability Limitations on Unregulated Services

Public Counsel asserts that the proposed liability tariff would unlawfully impose liability limitations for services not regulated by the Commission, such as Laclede's home sale inspections and HVAC service work. It is Public Counsel's understanding that these unregulated services are "normally considered in the ratemaking process" and would therefore be subject to the proposed liability tariff. The Missouri Legislature has not extended the Commission's authority to limit Laclede's liability over these services. § 386.240 RSMo 2000. Unregulated competitive services offered by a business that is not operating as a public utility does not have the advantage of getting a tariff approved by a regulatory agency to limit all liability claims as proposed by Laclede. To allow Laclede's unregulated operations to operate under tariff protections would give Laclede an unfair advantage over Laclede's unregulated competitors.

c. Unlawful to Change Minimum Safety Standards to Maximum Standards

Public Counsel asserts that the proposed tariff revisions would unlawfully alter the scope of *minimum* federal and state safety regulations by essentially concluding that compliance with minimum standards should be automatically deemed to be the *maximum* standard by which Laclede must operate. The "purpose" provisions of 4 CSR 240-40.030 and 49 CFR Part 192.1(a) clearly indicate that such rules are meant to be the minimum standards, implying that Laclede's obligations towards consumer safety go beyond these minimum standards. These rules establishing the minimum safety standards impose an inherent obligation upon Laclede to go beyond these standards if necessary to ensure the safe distribution of gas. The tariff proposed by Laclede would consider compliance with

these minimum standards to end Laclede's obligations towards safety. Not only is this change unlawful and in conflict with these regulations, but it could lessen Laclede's attentiveness towards ensuring consumer safety.

2. Unreasonable

Public Counsel asserts the following:

a. It is unreasonable to predetermine that Laclede is not liable when Laclede's negligent actions caused the injuries or damages in question. Courts of law are better able to assess the specific facts in question to determine negligence.

b. It is unreasonable to require customers to "indemnify, hold harmless and defend the Company" in all claims or suits brought against Laclede regarding service work performed on Customer Equipment even where Laclede's negligent actions caused the damages in question. It is not reasonable to require consumers to pay Laclede's legal fees where Laclede's actions created the liability.

c. It is unreasonable to weaken consumer protections by declaring minimum federal and state safety standards to be the maximum standards a utility must follow. These regulations were clearly established as minimum standards.

d. It is unreasonable to impose liability limitations for unregulated services when Laclede's unregulated competitors are not afforded the same legal protections.

e. It is unreasonable to create an ambiguity in the rule regarding Laclede's responsibility over providing gas that is free of constituents.

f. It is unreasonable to impact Laclede's revenue requirement outside the context of a rate case.

g. It is unreasonable to provide arbitrary time limitations on Laclede's liability. The impact of Laclede's negligence may not be known within the abbreviated timeframes proposed by Laclede.

WHEREFORE, the Office of the Public Counsel respectfully offers this Statement of Position.

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston
Marc D. Poston (#45722)
Senior Public Counsel
P. O. Box 2230
Jefferson City MO 65102
(573) 751-5558
(573) 751-5562 FAX
marc.poston@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 2nd day of October 2009:

General Counsel Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
GenCounsel@psc.mo.gov

Zucker E Rick
Laclede Gas Company
720 Olive Street
St. Louis, MO 63101
rzucker@lacledegas.com

Berlin Bob
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Bob.Berlin@psc.mo.gov

Pendergast C Michael
Laclede Gas Company
720 Olive Street, Suite 1520
St. Louis, MO 63101
mpendergast@lacledegas.com

/s/ Marc Poston