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September 30, 2002

FILED³

SEP 30 2002

**Missouri Public
Service Commission**

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Missouri 65102

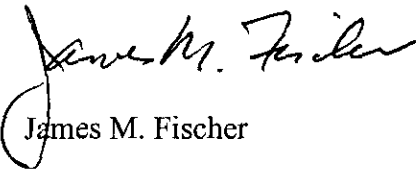
RE: *In the Matter of the Tariff Filing of Laclede Gas Company*, Case No. GA-2003-0032.

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter is an original and eight (8) copies of Laclede Gas Company's Position Statement. In addition, I have enclosed for filing an original and eight (8) copies of the Rebuttal Testimony of R. Lawrence Sherwin and Michael T. Cline.

Copies of the foregoing have been hand-delivered or mailed this date to counsel for all parties of record. Thank you for your attention to this matter.

Sincerely,


James M. Fischer

Enclosures

cc: Office of the Public Counsel
General Counsel
Richard Brownlee

Exhibit No.:

Issue:

Aggregation Issues

Witness:

R. Lawrence Sherwin

Type of Exhibit:

Rebuttal Testimony

Sponsoring Party:

Laclede Gas Company

Case No.:

GT-2003-0032

Date:

September 30, 2002

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**Missouri Public
Service Commission**

LACLEDE GAS COMPANY

GT-2003-0032

REBUTTAL TESTIMONY

OF

R. LAWRENCE SHERWIN

ADELE M. FOLLMER
Notary Public — Notary Seal
STATE OF MISSOURI
Jefferson County
My Commission Expires: June 11, 2004

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REBUTTAL TESTIMONY OF R. LAWRENCE SHERWIN

1

2

3 Q. Please state your name and business address.

4 A. My name is R. Lawrence Sherwin, and my business address is 720 Olive Street,
5 St. Louis, Missouri, 63101.

6 Q. What is your present position?

7 A. I am Assistant Vice President - Regulatory Administration of Laclede Gas
8 Company.

9 Q. Please tell us how long you have held this position and describe your
10 responsibilities.

11 A. I was appointed in February 1999. In this position I am responsible for managing
12 the administration of Laclede's tariff and certain other federal and state regulatory
13 matters, and am also responsible for conducting various projects, studies, analyses
14 and other tasks from time to time.

15 Q. What is your educational background?

16 A. I graduated from St. Louis University in 1975 with the degree of Bachelor of
17 Science in Business Administration, majoring in Accounting.

18 Q. Are you a member of any professional organizations?

19 A. I am a member of the Institute of Management Accountants.

20 Q. Will you briefly describe your experience with the Company prior to assuming
21 your current position?

22 A. I joined Laclede in 1975 as an Accountant. I was transferred the following year to
23 the Budget department, where I served in senior staff and assistant managerial

1 capacities. I later served successively as Supervisor of Corporate Accounting and
2 Manager of Financial Planning. In 1982 I was appointed Manager of Accounting,
3 with responsibility for managing Corporate Accounting, General Accounting and
4 Property Records departments. In 1988 I was named Director of Customer
5 Accounting, with responsibility for Collection and Credit, Customer Accounting,
6 Meter Reading and Methods and Procedures. The cashiers group was added to
7 my area of responsibility in 1991. In August 1992 I was elected Assistant Vice
8 President of Customer Accounting. Effective January 1997 I was named
9 Assistant Vice President of Human Resources. Although several of my
10 assignments detailed above have been in other areas, I have assisted in various
11 facets of Laclede's rate matters over much of my employment, including work at
12 times in cases filed by Mississippi River Transmission Corporation, an interstate
13 pipeline that serves Laclede.

14 Q. Have you previously filed testimony before this Commission?

15 A. Yes. I have also testified before the Federal Energy Regulatory Commission.

16 Q. What is the purpose of your rebuttal testimony?

17 A. The purpose of my rebuttal testimony is to address the direct testimony of Staff
18 witnesses Gray, Russo, Imhoff and Markway concerning fees for aggregation and
19 balancing, transition costs and franchise taxes. I will also address issues raised in
20 the direct testimony of Louie Ervin, filed on behalf of the Missouri School Boards
21 Association ("MSBA") and the Cooperating School Districts of St. Louis
22 ("CSD").

RESPONSE TO STAFF WITNESSES

Q. Do you agree with the general approach taken by Staff witness James A. Gray in his direct testimony?

A. Yes. Mr. Gray methodically evaluated the tariff sheets filed by Laclede on August 1, 2002 (the "Tariff"), which tariff sheets describe an "Experimental School District Aggregation Service" (the "Aggregation Service") by comparing the Tariff to the requirements of Section 393.310 of the Revised Statutes of Missouri (the "Statute"). I believe that this is the proper approach because Sections 4 and 5 of the Statute require the Tariff to meet certain criteria.

Q. On page 9 of his direct testimony, Mr. Gray claims that the Tariff does not comply with the Statute because, based on timing differences, Laclede's balancing and aggregation fee could exceed \$.004 per therm. Do you agree?

A. Mr. Gray's concern may be due, in part, to a misunderstanding regarding how the Tariff is intended to work. For example, on page 9, lines 17-18 of his direct testimony, Mr. Gray states that "For any imbalances, the proposed tariff seems to require Laclede to make up the dollar amount of the imbalances in the following month." Actually, Section D of the Tariff provides that Laclede will track balances, and that the Association must arrange to correct any imbalances in a given month by adjusting the amount of gas delivered in the following month. There is no charge specifically associated with this balancing event. Nevertheless, Laclede believes that the original tariff language was somewhat vague and that it should be revised. Specifically, in Section F of the Tariff, Laclede intended to reflect a charge of \$.004 per therm for aggregation and

1 balancing services. Instead the language in Section F refers to “\$.004 per therm
2 for the occurrence of any imbalances...” The revised Tariff in Schedule 1 to the
3 rebuttal testimony of Laclede witness Cline clarifies that the \$.004 per therm
4 charge is for aggregation and balancing services, and not for the occurrence of
5 imbalances.

6 Q. With respect to Mr. Russo’s direct testimony, do you agree with his statements
7 beginning on page 2, line 21, that “the \$.004 per therm fee allowed for
8 aggregation and balancing services may not be sufficient for Laclede to recover
9 all of its incremental costs” and that “[t]he \$.004 per therm fee cap is designed
10 for Laclede to recover the incremental costs of Laclede and the fee is capped at
11 \$.004 per therm” during the first year of the Aggregation Service?

12 A. Partially. Mr. Russo defines incremental cost as those costs that result from
13 provision of the Aggregation Service. At this time, Laclede agrees that the \$.004
14 per therm aggregation and balancing fee may not be sufficient to generate revenue
15 at least equal to all incremental costs caused by the Aggregation Service.
16 Therefore, if such incremental costs arise, Laclede agrees with Staff that pursuant
17 to the Statute a tariff provision must be in place to permit the Company to recover
18 such costs from the schools. Accordingly, Section J of the Tariff provides for a
19 charge to be assessed to cover these costs, so that no negative financial impact
20 will occur to the Company or its customers. With these protections, the
21 Commission can make the requisite findings under Section 5 of the Statute.

22 Q. So then do you support or oppose Mr. Russo’s true-up and status report proposal
23 at page 4, lines 12-18, of his direct testimony?

1 A. Laclede has no problem providing appropriate cost data in the event it becomes
2 necessary to adjust its rates for the Aggregation Service. Section J has
3 accordingly been revised, as shown in Schedule 1 to Mr. Cline's rebuttal
4 testimony, to reflect that such information will be provided and to adopt other
5 suggestions made by Mr. Russo.

6 Q. Do you agree with Staff witness Markway's testimony beginning at page 2, line 6,
7 that the proper franchise taxes due to the local taxing authorities should be based
8 on actual gas costs incurred by the school districts under the Aggregation Service,
9 rather than Laclede's PGA rates?

10 A. Section 5 of the Statute states that the Commission must find that implementation
11 of the experimental Aggregation Service will not have any negative financial
12 impact on local taxing authorities. In creating the Tariff, we interpreted this to
13 mean that, in effect, the local taxing authorities would not be affected by any
14 financial consequence arising from the school aggregation experiment. At any
15 given time, the cost of gas purchased by the school's aggregator could be higher
16 or lower than Laclede's rate. This would mean that if the taxes paid to the local
17 taxing authorities were based on the actual cost of gas delivered by the aggregator
18 to Laclede, the taxing authority could receive more or less than the amount they
19 would have received had the Aggregation Service not been implemented.
20 Accordingly, the only way to *ensure* that the local taxing authorities are not
21 negatively impacted by the Aggregation Service is to charge and remit the tax that
22 would have been charged under Laclede's original tariff.

23 Q. Is Laclede therefore unwilling to modify the tariff?

1 A. Ms. Markway and other witnesses have testified that the taxing authorities will
2 not be negatively impacted so long as they receive the appropriate rate on gross
3 receipts, regardless of a change in the cost of gas caused by the participation of
4 the school districts and their aggregator in the Aggregation Service. Certainly,
5 Laclede can agree that by basing the tax on the actual cost of gas delivered by the
6 aggregator, there is just as much opportunity for local taxing authorities to benefit
7 financially from the Aggregation Service as there is for them to be detrimentally
8 affected. Accordingly, as shown in Schedule 1 to the rebuttal testimony of
9 Laclede witness Cline, Laclede has revised the Tariff to provide that franchise
10 taxes will be part of the monthly reconciliation provided in Section F of the
11 Tariff, thereby ensuring that franchise taxes will be based on the actual cost of gas
12 delivered by the aggregator to Laclede.

13 Q. Staff Witness Imhoff opposes the clause in Section J of Laclede's Tariff that
14 provides that costs of providing the Aggregation Service be deemed to be
15 prudently incurred by the Company. How do you respond?

16 A. Under Section 5 of the Statute, the Aggregation Service may not have a negative
17 financial impact on the Company or its other customers. Laclede believes the
18 Tariff can comply with this provision without the reference to prudence.
19 Accordingly, Laclede has removed this reference as shown in Schedule 1 to the
20 rebuttal testimony of Laclede witness Cline.

21 Q. Staff Witness Markway states that Staff's position is that either the schools'
22 aggregator or their marketer should pay such taxes. Do you agree with this Staff
23 position?

1 A. No. Our Tariff proposes that taxes be paid by the utility and collected from the
2 school aggregation customers as part of the gas bill from Laclede. Given the fact
3 that Laclede must be the reseller of the gas to the school districts under the Tariff,
4 payment by Laclede is the only practical approach to paying such taxes and is the
5 method that will work most efficiently.

6 Q. Staff Witness Markway refers to avoiding “possible problems with the LDC
7 needing to pay taxes on the franchise taxes received on behalf of aggregators”.
8 Will there be any such “possible problems” with Laclede?

9 A. No. That is only a problem if the aggregator or marketer pays the taxes to
10 Laclede and then Laclede remits them to the taxing authority. Under the approach
11 proposed by Laclede, however, only the end-user will pay the tax as part of the
12 customer’s bill from Laclede. In short, under the approach included in Laclede’s
13 tariff, there is no possibility that taxes on the franchise taxes would present any
14 new “problem” – the taxes would be treated precisely as are the taxes for other
15 customers.

16 Q. Are there any other reasons why Laclede’s approach to taxes is most appropriate?

17 A. Yes. Once again, the Statute requires that there be no negative financial impact
18 on either the gas corporation, its customers or the local taxing authority. Over the
19 years, significant legal disputes have arisen over the power of local taxing
20 authorities to collect taxes on gas supplies and upstream transportation services
21 purchased by transporters in Missouri. Although the schools indicate that they
22 would “voluntarily” pay such taxes, it is possible that others would challenge the
23 propriety of making such payments and that disputes over the proper amount of

1 such payments could arise. Under such circumstances, the local taxing authority
2 might lose revenues or even seek to collect the lost revenues from the gas
3 corporation. Either scenario would result in a detriment prohibited by the Statute.
4 By doing what the Statute commands, namely by making the gas corporation the
5 reseller of the gas supplies and transportation services, such detrimental impacts
6 can be entirely avoided.

7 **RESPONSE TO SCHOOL DISTRICT WITNESS**

8 Q. Beginning at page 9 of his direct testimony, Mr. Ervin, on behalf of the school
9 districts, discusses a number of difficulties that he asserts will arise in the event
10 Laclede takes title to the gas supplies and acts as the reseller to the schools. How
11 do you respond?

12 A. I believe that many of the difficulties cited by Mr. Ervin are exaggerated as
13 evidenced by the lack of any detail on exactly how they would result in any real
14 detriment to his clients. Nevertheless, to the extent that Mr. Ervin has issues
15 regarding Laclede's role as a reseller of the gas supplies and transportation
16 services that will be used to serve the school, his issues are with the Missouri
17 General Assembly, and not with Laclede. As Laclede witness Cline explained in
18 his direct testimony, the school aggregation Statute under which Laclede filed its
19 tariff has a number of *minimum* requirements that must be included in the Tariff.
20 One of these is the requirement that the Tariff have provisions relating to the gas
21 supplies procured for the school districts that "[p]rovide for the resale of such
22 natural gas supplies, including related transportation service costs, to the eligible
23 school district at the gas corporation's cost of purchasing such gas supplies and

1 transportation" Simply put, the only way that Laclede can meet this statutory
2 mandate of selling gas supplies and transportation services at "the gas
3 corporation's cost of purchasing such gas supplies and transportation" is to
4 *actually* purchase them by taking title and then reselling them at cost as the statute
5 says. Conversely, Laclede cannot, as Mr. Ervin suggests, comply with this
6 provision by providing a transportation-only service under which it would *never*
7 purchase such supplies, *never* take title to them, and *never* resell them at its cost.

8 Q. But Mr. Ervin implies that this reading of the Statute's language may be
9 inconsistent with its legislative history. Do you agree?

10 A. No. I have been advised by counsel that since the language of the Statute is clear
11 on its face, there is no need to resort to legislative history. I would note, however,
12 that I am unfamiliar with anything in the legislative history of this statute that
13 would suggest an interpretation different from the one reflected in Laclede's
14 tariff. In fact, just the opposite is true.

15 Q. Please explain what you mean.

16 A. On May 14, 2002, I attended a meeting in the office of Senator Wayne Goode in
17 reference to the legislation which resulted in Section 393.310. A number of
18 utilities were represented at the meeting, as were school associations or interests
19 and Commission Staff members. I recall that Mr. Ervin was connected by
20 telephone during much of the discussion.

21 Q. Was the concept of "resale" in the legislation discussed.

22 A. Yes, the concept of "resale" was discussed as a means of ensuring a Missouri
23 "nexus" for taxation purposes to the cost of natural gas which would be used by

1 school entities participating in the aggregation program. By way of background,
2 most natural gas purchases by customers who transport their own gas are not
3 subject to state or local taxes because the purchase is made outside of the state,
4 closer to the gas producing regions. (Schools are exempt from state taxes, but
5 utility service to schools is not exempt from local franchise or gross receipts
6 taxes.) In the meeting, it was clear to me that proponents of natural gas
7 aggregation for schools had accepted the goal that local tax savings that normally
8 result from natural gas transportation should be eliminated for the school
9 aggregation program included in the legislation so as not to negatively impact
10 local taxing authorities. After discussing a number of ways of assuring that taxes
11 would be paid, including discussion of voluntary payments by schools instead of
12 franchise or gross receipts taxes, attention focused on incorporating the concept of
13 purchase of the transported gas by the local distribution company serving as the
14 utility, and subsequent "resale" of the same gas to schools at the outlet of their gas
15 meters. In this manner, the cost of the transported gas would have a clear
16 Missouri nexus, and would be subject to local gross receipts or franchise taxes to
17 the same extent as are existing traditional gas sales. This concept was ultimately
18 reflected in the bill that was passed.

19 Q. Do you agree with Mr. Ervin's proposal that the revenue from the \$.004 per therm
20 charge should be credited to the PGA?

21 A. No. There is no basis for crediting such revenue to the PGA, absent a showing
22 that its retention by the Company is unnecessary to prevent any negative financial
23 impact on the Company.

1 Q. How do you respond to Mr. Ervin's suggestion at page 24, line 3 of his direct
2 testimony that Laclede specify a percentage of lost and unaccounted for gas?

3 A. As shown in Schedule 1 to the rebuttal testimony of Laclede witness Cline,
4 Laclede has revised its Tariff to address this concern.

5 Q. Does this conclude your rebuttal testimony?

6 A. Yes, it does.