

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

In the Matter of Laclede Gas Company's)
Tariffs Designed to Permit Early Imple-)
mentation of Cold Weather Rule Pro-)
visions and to Permit Laclede to)
Collect Bad Debt through the PGA.)

Case No. GT-2009-0026
Tariff File No. JG-2009-0033

Motion to Reject Tariff and to Dismiss Docket

COMES NOW the Staff of the Missouri Public Service Commission and, for its Motion to Reject Tariff and to Dismiss Docket, states as follows:

1. On July 9, 2008, Laclede Gas Company (Laclede or Company) filed tariff sheets designed to permit Laclede to recoup a portion of its bad debts through the Purchased Gas Adjustment (PGA).

2. The PGA permits natural gas utilities like Laclede to pass on to consumers volatile commodity costs outside of a general rate case and is permissible because natural gas commodity costs are unlike other costs because they are outside of the control of the utility and cannot be offset by economies elsewhere. *State ex rel. Midwest Gas Users' Association v. Public Service Commission*, 976 S.W.2d 470, 480 (Mo. App., W.D. 1998).

3. By contrast, the Missouri Supreme Court has held that it is generally impermissible as single-issue ratemaking to pass utility costs on to consumers outside of a general rate case because, in setting rates, the Commission is required to consider all relevant factors so that both cost increases and offsetting savings can be considered in setting just and reasonable rates. *State ex rel. Utility Consumers Council, Inc. v. Public Service Commission*, 585 S.W.2d 41, 52-54 (Mo. banc 1979); *State ex rel.*

Missouri Water Company v. Public Service Commission, 308 S.W.2d 704, 718-720 (Mo. 1957); § 392.240.1, RSMo.

4. This case should be dismissed because Laclede invites the Commission to engage in unlawful single-issue ratemaking. “[T]he commission must of course consider all relevant factors including all operating expenses and the utility’s rate of return, in determining” just and reasonable rates. *State ex rel. Utility Consumers’ Council of Missouri, Inc. v. Public Serv. Comm’n*, 585 S.W.2d 41 49 (Mo. 1979).

5. Laclede now asks the Commission to consider and change the way this single revenue item is recovered, without consideration of all other relevant factors.

6. While the technicalities of Missouri’s PGA clause have varied over the years, the clause’s basic function has remained the same: a PGA clause allows a local distribution company to automatically adjust the rates it charges its customers in proportion to the change in the rate the local distribution company is charged by its wholesale suppliers.” *State ex rel. Midwest Gas Users’ Ass’n v. Public Service Comm’n*, 976 S.W.2d 470 (Mo.App. W.D. 1998) (emphasis added).

7. Bad-debt expenses are not a direct gas cost and are included in the overall cost of service approved in Laclede’s last rate case. Should the Commission approve Laclede’s proposed tariff, Laclede will double recover its bad-debt expense since that cost is already included in its base rates.

8. A Commission order granting the relief requested would be unauthorized by law, unjust, unreasonable, and likely to be reversed by the Courts.

9. A motion to dismiss may be made if the Applicant has failed to state a claim upon which relief can be granted. See Missouri Rule of Civil Procedure

55.27(a)(6). “This rule exists ‘to permit resolution of claims as early as they are properly raised in order to avoid the expense and delay of meritless claims or defenses and to permit the efficient use of scarce [Commission] resources.’” *Fox v. White*, 215 S.W.3d 257, 259 (Mo. App., W.D. 2007), *quoting ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993).

10. Rule 55.27(a)(6) of the Missouri Rules of Civil Procedure allows a party to move for dismissal of an action based on the adverse party’s failure to state a claim upon which relief can be granted. “On a motion to dismiss for failure to state a cause of action, the [Commission] reviews the allegations of the petition to determine whether the facts pled therein are sufficient as a matter of law.” *State ex rel. Union Electric Company v. Dolan*, 256 S.W.3d 77, 82 (Mo. banc 2008); *citing Grewell v. State Farm Mut. Auto. Ins. Co.*, 102 S.W.3d 33, 36 (Mo. banc 2003).

11. The acts pled demonstrate Laclede is asking the Commission to engage in single-issue ratemaking.

12. No evidence is weighed in reviewing a pleading for failure to state a claim, and the petition is reviewed to determine whether the facts in the petition give rise to a recognized cause of action. *Id.*

13. The proposed tariff should be rejected, the procedural schedule should be suspended and this matter should be dismissed, because the requested relief is unlawful.

WHEREFORE, for all the reasons noted above, Staff prays that the Commission suspend the procedural schedule, reject the proposed tariff, File No. JG-2009-0033,

dismiss this docket, and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Lera L. Shemwell

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Certificate of Service

I hereby certify that copies of the foregoing have been emailed, mailed, hand-delivered, or transmitted by facsimile to all counsel of record this **20th day of October 2008**.

/s/ Lera L. Shemwell