BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Laclede Gas Company Tariff Filing to Recover Bad Debt Expenses Through the PGA and to Modify Cold Weather Rule Provisions.	))))	Case No. GT-2009-0026 Tariff No. JG-2009-0033

PUBLIC COUNSEL'S RESPONSE
IN SUPPORT OF THE STAFF'S MOTION
TO REJECT TARIFF AND DISMISS DOCKET

COMES NOW the Missouri Office of the Public Counsel and for its response to the Staff's October 20, 2008 Motion to Reject Tariff and to Dismiss Docket states:

1. On July 9, 2008, Laclede Gas Company filed a proposal to amend its tariffs to make an unprecedented change to rates by passing a portion of Laclede's bad debt expense to its customers through periodic adjustments to the customer's purchased gas adjustment (PGA) rate. On October 20, 2008, the Staff filed its motion requesting that the Commission suspend the procedural schedule, reject the proposed tariff, and dismiss the docket. Public Counsel supports the Staff's motion.

2. The Staff correctly concludes that Laclede's tariff filing, if approved, would be an unlawful grant of single-issue ratemaking. Laclede's proposed tariff seeks to allow Laclede to include a "net write-offs adjustment" calculated as follows:

> The net write-offs adjustment shall be derived by subtracting one-twelfth of the gas cost portion of the annual net write-offs recovered through the Company's non-gas rates from the gas cost portion of the Company's actual net write-offs in each month. The gas cost portion of the Company's annual net write-offs recovered through the Company's non-gas rates shall be determined in the Company's most recent general rate case.

By this language, Laclede wants to change rates by isolating certain increases and decreases in bad debt expense but without consideration of all relevant cost factors. A careful analysis of the case law addressing *single-issue* ratemaking and *retroactive* ratemaking reveals that the proposal is unlawful on both fronts and should be rejected before any additional resources are needlessly wasted opposing this proposal.

Retroactive Ratemaking

3. In *Utility Consumers Council of Missouri, Inc. v. P.S.C., 585 S.W.2d 41 (Mo. 1979)* ("*UCCM*"), the Supreme Court concluded that the Commission "may not, however, redetermine rates already established and paid without depriving the utility (or the consumer if the rates were originally too low) of his property without due process." Laclede argues that its bad debt expense is included in the revenue requirement included in rates charged since August 1, 2007. (Cline Direct, p.4). Laclede's bad debt adjustment would increase rates already established, which violates a consumer's right to due process under the *UCCM* analysis. The Supreme Court in *UCCM* also stated:

> The utilities take the risk that rates filed by them will be inadequate, or excessive, each time they seek rate approval. To permit them to collect additional amounts simply because they had additional past expenses not covered by either clause is retroactive rate making, i.e. the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established.

Laclede's request for retroactive ratemaking treatment should be rejected outright as an obvious and unlawful attempt to allow Laclede to collect additional amounts to recover for past losses.

4. Laclede wants the Commission to establish $8,100,000 as Laclede's annual amount of bad debts included in current base rates. However, the Commission did

not determine a level of bad debts in Laclede's last general rate case. Case Number GR-2007-0208 settled as the result of a black box settlement wherein the parties did not agree on a level of bad debts. Laclede witness Mr. Michael T. Cline attempts to sweep this major flaw aside by alleging that the Commission should *now* determine a specific level of bad debts a year and a half later. Mr. Cline states:

> The last bad debt write-offs that were available to the parties for review in that case, and that can be considered to be representative of the bad debts included in the Company's base rates, were based on the twelve months ended March 31, 2007 and amounted to approximately $10.8 million. Due to the time that generally elapses between billing and write-offs, the foregoing write-offs were associated with revenues for the twelve months ended May 31, 2006. Since approximately 75% of those revenues were gas cost related, $8.1 million represents the Company's recovery of the gas cost portion of bad debts that is included in base rates.[1]

The Stipulation and Agreement ("Agreement') resolving Case Number GR-2007-0208 does not include a level of bad debt expenses. When the Commission approved the Agreement and resolved the rate case, the Commission also approved the parties' specific agreement that they did not approve or acquiesce in "any method of cost determination or cost allocation, depreciation or revenue related method." Laclede's proposed tariff is an unlawful attempt at retroactively establishing a level of bad debts using numbers that were not agreed on by the parties, and even if accurate for 2006, will be three years out of date by the time Laclede makes its next PGA adjustment.

5. The Missouri Court of Appeals for the Western District in *Midwest Gas Users Assoc., et al. v. P.S.C., et al, 976 S.W.2d 470 (Mo.App. 1998)* addressed arguments that the PGA clause constituted retroactive ratemaking. The Court concluded that the PGA for gas costs is not retroactive ratemaking because adjustments "are applied only to

[1] Direct Testimony of Michael T. Cline, Case No. GT-2009-0026, September 16, 2008, p.4.

future customers on future bills" and "companies are not allowed to adjust the amount charged to past customers either up or down." Laclede's proposal involves both past customers and past bills because past losses or excesses would be netted against Laclede's claim to an $8,100,000 base amount. It would subtract "one-twelfth of the gas cost portion of the annual net write-offs recovered through the Company's non-gas rates." In other words, it would allow Laclede to adjust amounts charged to past customers up and down, in direct violation of the prohibition against retroactive ratemaking.

Single Issue Ratemaking

6. The Commission's ratemaking authority under § 393.270 requires that the Commission, when establishing a rate, to "consider all facts…with due regard, among other things to a reasonable average return upon capital actually expended." The Missouri Supreme Court interpreted this statute as a legislative prohibition against single-issue ratemaking. In *UCCM*, the Supreme Court reviewed a Commission decision authorizing a fuel adjustment clause that allowed "dollar for dollar recovery of fuel costs above or below the base fuel cost." In overturning the Commission's order, the Court cited to the § 393.270 RSMo requirement that the Commission consider "all relevant factors" in approving a new rate. The order authorizing the fuel adjustment clause was reversed because it permitted "one factor to be considered to the exclusion of all other factors in determining whether or not a rate is to be increased." Laclede's proposed tariff also seeks to raise rates by considering only one factor, bad debts, to the exclusion of all other factors.

7. The Supreme Court in *UCCM* concluded that "the commission must of course consider all relevant factors including all operating expenses and the utility's rate of return." Laclede's proposal does not look at all operating expenses, rather, it isolates a portion of bad debt expense and excludes an analysis of all other operating expenses. It is very possible that Laclede has experienced savings in other operating expenses that are more than sufficient to cover any alleged increase in bad debt. Moreover, if Laclede were authorized to reduce its risks by ensuring a dollar for dollar recovery of bad debt expenses, a corresponding adjustment would need to be made to Laclede's revenue requirement to recognize the reduced business risk in Laclede's rate of return.. Rate of return is a relevant factor under the *UCCM* decision that will not receive lawful consideration if the Commission approves the tariff and allows Laclede to make rate adjustments outside of a rate case.

8. In *Hotel Continental v. Burton, 334 S.W.2d 75 (Mo. 1960),* the Supreme Court reviewed a Commission decision approving a tax adjustment clause (TAC) that passed local taxes to utility customers outside the context of a rate case. The taxes on an individual customer's account could be specifically determined and accurately assessed to each customer. The Court approved the TAC in part because the taxes were "not affected by economy of operation in other respects or by greater volume of sales or by variations in the amounts of any other expense items." As such, the TAC could be levied "without regard to changes in other costs and without disturbing the statutory scheme that changes in rates of return not occur without consideration of all costs factors and without public awareness and understanding of rates proposed to be charged." The Court

concluded that an increase in taxes could not affect the utility's revenue and because the "approved rate of return of necessity remains the same".

9. Under the *Hotel Continental* analysis, Missouri Courts would uphold a Commission decision rejecting Laclede's proposed tariff. Laclede's bad debts cannot be exactly determined since Laclede proposes to use "approximately 75%" of a bad debt level that no party but Laclede supports. This is hardly exact. Furthermore, improvements in Laclede's collection practices could offset any increased bad debt expense. If Laclede's rates include a level of bad debts as Laclede claims, increases in sales would increase Laclede's bad debt recoveries.

10. The Supreme Court in *UCCM* understood the importance of maintaining the ratemaking balance created by the legislature. The Court held:

> [W]e will not travel further down the "slippery slope" and risk a dismantling of the carefully balanced fixed rate system established by the legislature. While in itself the clause looks innocuous, and while the cost of fuel may look high, to permit such a clause would lead to the erosion of the statutorily-mandated fixed rate system. If the legislature wishes to approve automatic adjustment clauses, it can of course do so by amendment of the statutes, and set up appropriate statutory checks, safeguards, and mechanisms for public participation…
>
> It the electric companies are faced with an "emergency" situation because of rising fuel costs, they can take advantage of the method set up by the legislature to deal with such situations and file for an interim rate increase on the basis of an abbreviated hearing…

Approving this tariff runs the risk of greatly disrupting this careful balance and eroding the system that has proven successful and protected consumers since the onset of the Commission. Laclede has identified no statutory authority that would allow the Commission to approve the proposed tariff and allow the rate increases requested by

Laclede. If Laclede is having legitimate problems recovering its costs, it has statutory remedies that do not run afoul of the ratemaking system.

11. Laclede attempted to include bad debts in the PGA in its last rate case. The Staff and Public Counsel opposed the concept. It is safe to conclude that Public Counsel and the Staff would not have agreed to a rate case settlement with Laclede that included bad debt recovery in the PGA. In the give and take of settlements, Laclede backed off of the proposal in order to reach a settlement that would authorize Laclede to increase its revenues by $38,600,000. The parties agreed that no cost allocation was agreed upon in the Agreement, and now Laclede wants the Commission to find that the Agreement includes a specific cost allocation for bad debts. To allow Laclede to violate the rate case Agreement and the treatment of bad debts in the rate case would be a disservice to the process and would discourage parties from settling rate cases if utilities are allowed to trample on those agreements. Instead, the Commission should enforce its order approving the Agreement by rejecting Laclede's proposed tariff.

12. Allowing this case to continue would place an unnecessary demand on the limited resources of the Commission, the Commission's Staff, and the Office of the Public Counsel. Laclede does not face these same resource challenges, and therefore, is able to pursue requests for unlawful grants of authority without consequence. Public Counsel asks that the Commission rule on the Staff's motion and determine the lawfulness of Laclede's proposed tariff filing before continuing with the established procedural schedule.

WHEREFORE, the Office of the Public Counsel respectfully offers this response in support of the Staff's Motion to Reject Tariff and Dismiss Docket.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 30th day of October 2008:

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