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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

SURREBUTTAL TESTIMONY

OF

NATELLE DIETRICH

LACLEDE GAS COMPANY

CASE NO. GT-2009-0056


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Q. Please state your name and business address.

A. My name is Natelle Dietrich. My business address is 200 Madison Street, Jefferson City, Missouri, 65101.

Q. By whom are you employed and in what capacity?

A. I am employed by the Missouri Public Service Commission (Commission) as the Director of the Commission's Utility Operations Division.

Q. Please describe your educational background and work experience.

A. I hold a Bachelor of Arts Degree in English from the University of Missouri-St. Louis and a Master's Degree in Business Administration from William Woods University. I have over 15 years experience in retail and mortgage lending. My duties included analyzing customers' financial status, with the last several years concentrating on reducing a multi-million dollar high risk account portfolio through continued financial analysis and application of strategic risk reduction alternatives. I have been employed by the Commission for over 12 years. For about 9 of the 12 years, I was an Economist with increasing responsibilities in the Telecommunications Department of the Commission. A schedule of the various cases and issues for which I have had direct responsibility is attached to this testimony. In addition to my day-to-day management activities of the Operations Division, I also regularly participate in

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1 roundtables, rulemaking workshops and legislative hearings. I hold an appointment and
2 have served leadership roles on the National Association of Regulatory Utility
3 Commissions Staff Subcommittee on Telecommunications and hold an appointment to
4 the staff of the Federal-State Joint Board on Universal Service, which makes
5 recommendations to the Federal Communications Commission on issues related to
6 promoting universal telecommunications service throughout the United States.

7 Q. What is the purpose of your pre-filed testimony?

8 A. I am filing this testimony to respond to the Rebuttal Testimony of Office
9 of Public Counsel (OPC) witness Barbara A. Meisenheimer. On page 3, beginning at line
10 13 and continuing to page 4 of her testimony, Ms. Meisenheimer lists several general
11 concerns, including: the modified tariff language 1) weakens customer protections; 2)
12 weakens the Company's incentive to provide safe and adequate service; 3) is
13 unreasonable and against public interest; and, 4) shifts the risk to customers. While other
14 Staff witnesses will address the merits of Ms. Meisenheimer's claims, I will address these
15 statements generally from the policy standpoint.

16 Q. What policy issues would you like to address in relation to Ms.
17 Meisenheimer's concerns?

18 A. The mission of the Commission is to ensure Missouri consumers have
19 access to safe and reliable utility service at just, reasonable and affordable rates. By this
20 mission the Commission is committing to ensure that all customers of any utility, in this
21 case Laclede Gas Company (Laclede or Company), have safe and reliable service at just,
22 reasonable and affordable rates. Ms. Meisenheimer's testimony focuses on a select
23 portion of the company's customers (i.e., only those customers with a claim against

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1 Laclede versus all other customers of the company). The proposed tariff sheet is an
2 attempt to "establish reasonable parameters for when [Laclede] and ultimately its
3 customers should be potentially subject to liability in civil court and the consequent
4 financial responsibility for incidents that occur on customer's premises 'downstream' of
5 [Laclede's] meter." (Laclede witness Abernathy Direct, page 1, line 24 through page 2,
6 line 2) In other words, consistent with the Commission's mission, the tariff proposes to
7 address the larger policy issues of balancing the company/customer relationship of a
8 select, small subset of customers with the costs that are recoverable from all customers
9 while ensuring all safety needs are met.

10 Q. Is Laclede the first utility to submit a tariff sheet with liability language
11 for Commission review and approval?

12 A. No. While not all entirely on point with the Laclede proposed tariff
13 language, the Commission has approved, or allowed to go into effect, several instances of
14 tariffs with limitation of liability language. Following are excerpts from two tariffs that
15 contain language very similar to what is being proposed for Laclede.

16 In Tariff Tracking Number JE-2003-0707, the Commission approved the
17 following limitation of liability language for The Empire District Electric Company.
18 (Empire) (Note this tariff sheet was revised effective February 19, 2009.)

19 PSC Mo No. 5, Sec. 4, 4th Revised Sheet No. 4c

20 "4. The Company shall have no liability to the Customer or to any
21 other person, firm, association, trust, governmental unit, or corporation, of
22 any kind, for any loss, damage or injury by reason of any interruption or
23 curtailment of the Customer's load as provided herein."
24

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1 In Tariff Tracking Number JE-2003-0101, the Commission approved the
2 following limitation of liability language for Kansas City Power & Light Company
3 (KCP&L).

4 PSC MO No. 2, Fifth Revised Sheet No. 1.11 General Rules and
5 Regulations Applying to Electric Service
6

7 3.09. CONTINUITY OF SERVICE: The Company will use reasonable
8 diligence to supply continuous electric service to the Customer but does
9 not guarantee the supply of electric service against irregularities and
10 interruptions. Except where due to the Company's willful misconduct or
11 gross negligence, the Company shall not be considered in default of its
12 service agreement and shall not be liable in negligence or otherwise for
13 any claims for loss, expense or damage (including indirect, economic,
14 special or consequential damage) **regardless of cause.** (emphasis added)
15

16 Both of these examples are very similar to the language proposed by Laclede and
17 addressed by Ms. Meisenheimer on page 6 of her testimony. Specifically, beginning at
18 line 7, Ms. Meisenheimer states that the modified tariff is "over broad" and "imposes
19 extreme liability limitations on virtually every activity affecting gas service at the
20 customer premise including limiting liability for accident or negligence". The language
21 she underlines at lines 15 through 19, which presumably is language she wishes to
22 highlight as causing specific concern, discusses Laclede's liability limitations with
23 respect to "any damage or loss occasioned by interruption, failure to commence
24 delivery, or failure of service or delay in commencing service due to accident to
25 plant, lines, or equipment..." (emphasis added). This limitation is comparable to the
26 limitation of liability language which appears in the Empire and KCP&L tariffs quoted
27 above.

28 Q. Are there other examples of tariff language similar to what Laclede is
29 proposing that the Commission has approved?

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1 A. As additional examples, the following language appears in Missouri
2 American Water Company (MAWC), PSC MO No. 2, Sheet No. 9, effective June 22,
3 1974.

4 Rule 3 LIABILITY OF THE COMPANY

5 (a) The Company shall in no event be liable for any damage or
6 inconvenience caused by reason of any break, leak or defect in the
7 Customer's service or fixtures or in the physical connection between the
8 Customer's service and the Company owned service connection.
9

10 In AmerenUE, PSC Mo No. 2, 1st Revised Sheet No. 50, effective February 18,
11 1998, the following language appears.

12 D. Company Liability

13 Company will not be liable for and customer will indemnify and save
14 Company harmless from all claims for trespass, injury to persons, or
15 damage to lawn, trees, shrubs, buildings, or other property that may be
16 caused by the installation or replacement of service pipe and other
17 necessary facilities to serve customer unless the injury to persons or
18 damage to property has been caused by negligence of the Company or its
19 employees.
20

21 These examples, along with the Empire and KCP&L examples are not exhaustive,
22 but they do demonstrate that the Commission has previously reviewed and approved
23 tariff revisions where companies have incorporated language limiting their liability in
24 various circumstances. Although the examples do not specifically address the same
25 issues as the Laclede tariff, many of the concepts are similar and include similar
26 limitations of liability.

27 The MAWC liability tariff provision excludes the utility from liability for
28 customer equipment and customer service connection. Similarly, the proposed Laclede
29 tariff also excludes the utility from liability for customer lines and equipment on the
30 customer side of the service connection. Both tariffs serve the broader policy issue of

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1 protecting the utility and its customers from becoming insurers of individual customer
2 equipment.

3 Q. Are you aware of any other states' tariffs that limit liability of gas utility
4 companies?

5 A. Yes. Other states have liability tariff provisions that define the customer-
6 company relationship. In Staff's Recommendation to Suspend the Effective Date of the
7 [Laclede] Tariff, filed in this case on November 19, 2008, the Staff included some
8 examples of other states' tariff language. One example is the liability provisions of Xcel
9 Energy in Minnesota:

10 4.2 CUSTOMER'S PIPING AND EQUIPMENT

11 "...Any inspection of a customer's piping and equipment by the
12 Company is for the purpose of avoiding unnecessary interruptions of
13 service to its customers or damage to its property and for no other purpose,
14 and will not be construed to impose any liability upon the Company to a
15 customer or any other person by reason thereof. In addition, the Company
16 will not be liable or responsible for any loss, injury, or damage that may
17 result from the use of or defects in a customer's piping or equipment...."
18 (See Attachment E-1 of Staff's Recommendation)

19
20 Another example is the Liability Provisions of Ameren IP (Illinois Gas) in Illinois which
21 state:

22 C. Liability

23 "....nor shall the Company be liable for damages that may be
24 incurred by the use of gas appliances or the presence of the Company's
25 property on the Customer's Premises. Company is not responsible for or
26 liable for damage to Customer's equipment or property caused by
27 conditions not due to negligence of Company.... The Company shall not
28 be responsible nor liable for gas from and after the point at which it first
29 passes to the pipes or other equipment owned or controlled by the
30 Customer, and Customer shall protect and save harmless Company from
31 all claims for injury or damage to Persons or property occurring beyond
32 said point, except where injury or damage shall be shown to have been
33 occasioned solely by the negligence of the Company....". (See Attachment
34 E-4 of Staff's Recommendation).
35

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1 Q. Does the Staff support the concept of companies limiting their liability
2 through tariffs?

3 A. As evidenced by the Staff Recommendation, it depends on the context and
4 the actual language to be incorporated. In this instance, the Staff supports reasonable
5 limitations of liability language for several reasons that are more fully explained in the
6 testimony of the other Staff witnesses.

7 Q. Why does Staff support some limited liability language?

8 A. In the case of this Laclede tariff, as explained in the Rebuttal Testimony of
9 Staff witness Robert R. Leonberger in this case, Missouri is one of a few states that have
10 implemented rules that go above and beyond federal safety inspection requirements.
11 These rules provide customers, the company and the Commission with an extra level of
12 safety assurance before gas is even turned on at the customer premise. When revenues
13 associated with the safety inspection work are included in the ratemaking process, it is
14 appropriate for a tariff to define what might be considered a reasonable timeframe for a
15 customer to bring an action against the company as a result of the company's
16 performance related to the Commission required inspection.

17 After reviewing several data request responses, it is evident that Laclede has been
18 subject to defending and settling claims where Laclede has not been on or near the
19 customer's property for several months or even several years. Ultimately, the costs
20 associated with those claims will be included in the ratemaking process and passed to the
21 ratepayer. Without expressing an opinion on the merit of the claims, it is possible that
22 some or all of the costs incurred in defending and settling those claims may not have been

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1 incurred if Laclede's tariff had reasonable limitations on liability; thus, potentially
2 resulting in a different rate structure for customers.

3 Q. You keep mentioning that the limitations on liability language should be
4 reasonable. Has the Staff participated in negotiations related to developing tariff
5 language that is reasonable?

6 A. Yes. The Staff, the OPC and Laclede have been working on tariff
7 language for several months, and have even worked on proposed changes to address Ms.
8 Meisenheimer's concerns raised in rebuttal testimony. In response to these discussions
9 and concerns, OPC and Laclede filed proposed tariff language on September 23, 2009.

10 Q. Do you have any comments related to OPC's Alternative Liability Tariff
11 language or the Laclede's Revised Tariff Language, both filed on September 23, 2009?

12 A. Yes. I have compared OPC's Alternative Language to Laclede's Revised
13 Tariff Language. OPC, by its alternative language, has, in effect, removed all proposed
14 ratepayer and company protections from the tariff language. The Staff is supportive of
15 limitations of liability when the limitations balance the company/customer relationship
16 while ensuring all safety requirements are met. Since OPC's alternative language
17 removes the language that offered these protections, from a policy perspective, Laclede
18 and the ratepayers are no better off than they are today. Under OPC's alternative
19 language, the company, and ultimately the ratepayer, will have no protection in situations
20 involving customer equipment or in claims where the company was not involved. In
21 other words, if the Commission approves OPC's alternative language as a reasonable
22 limitation of liability, there is no point in making any changes to the existing tariff
23 language.

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1 Q. Do you have a recommendation as to tariff language that is "reasonable"?

2 A. Although it is hard to draft language to cover every possible scenario, in
3 the opinion of the Staff, Laclede's proposed tariff language filed on September 23, 2009
4 presents a reasonable and fair solution for both the company and its ratepayers to address
5 claims filed against the company in those situations involving customer equipment or
6 where the company was not involved.

7 Q. How does the Staff determine whether limitation of liability language is
8 "reasonable" or "fair"?

9 A. The American Heritage Dictionary of the English Language, Fourth
10 Edition defines "reasonable" as "being within the bounds of common sense" and defines
11 "fair" as "[h]aving or exhibiting a disposition that is free of favoritism or bias;
12 impartial;...[j]ust to all parties; equitable". While the terms are largely subjective,
13 analysis of the tariff language should consider the affected customer, the ratepayers as a
14 whole and the company. In keeping with the Commission's mission, the Staff has the
15 additional duty to review limitations of liability from the perspective of ensuring
16 Missouri consumers have access to safe and reliable utility service at just, reasonable and
17 affordable rates. Because of these objectives, and a recognition of the liability language
18 contained in other companies' tariffs, the Staff has engaged in discussions and
19 negotiations with Laclede and the OPC. As a result of working through this process, the
20 Staff recommends the Commission approve Laclede's proposed tariff revision filed on
21 September 23, 2009.

22 Q. Does this conclude your testimony?

23 A. Yes it does.

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Testimony, Presentation or Analysis Through Affidavits

- Case No. TA-99-405, an analysis of the appropriateness of a "payday loan" company providing prepaid telecommunications service.
- Case No. TX-2001-73, In the Matter of Proposed New Rules on Prepaid Calling Cards.
- Case No. TO-2001-455, the AT&T/Southwestern Bell Telephone Company arbitration, which included issues associated with unbundled network elements.
- Case No. TX-2001-512, In the Matter of Proposed Amendments to Commission Rule 4 CSR 240-33.010, 33.020, 33.030, 33.040, 33.060, 33.070, 33.080, 33.110, and 33.150 (telecommunications billing practices).
- Case No. TO-2002-222, the MCI/SWBT arbitration.
- Case No. TR-2002-251, In the Matter of the Tariffs Filed by Sprint Missouri, Inc. d/b/a Sprint to Reduce the Basic Rates by the Change in the CPI-TS as Required by 392.245(4), Updating its Maximum Allowable Prices for Non-Basic Services and Adjusting Certain Rates as Allowed by 392.245(11) and Reducing Certain Switched Access Rates and Rebalancing to Local Rates as Allowed by 392.245(9).
- Case No. TX-2002-1026, In the Matter of a Proposed Rulemaking to Implement the Missouri Universal Service Fund End-User Surcharge.
- Case No. TX-2003-0379, In the Matter of Proposed Amendments to Commission Rule 4 CSR 240-3.545, formerly 4 CSR 240-30.010 (tariff filing requirements).
- Case No. TX-2003-0380, In the Matter of Proposed Amendments to Commission Rules 4 CSR 240-2.060, 4 CSR 240-3.020, 4 CSR 240-3.510, 4 CSR 240-3.520, and 4 CSR 240-3.525 (competitive local exchange carrier filing requirements and merger-type transactions).
- Case No. TX-2003-0389, In the Matter of Proposed Amendment to Commission Rules 4 CSR 240-3.530 and 4 CSR 240-3.535, and New Rules 4 CSR 240-3.560 and 4 CSR 240-3.565 (telecommunications bankruptcies and cessation of operation).
- Case No. TX-2003-0445, In the Matter of a Proposed New Rule 4 CSR 240-33.160 Regarding Customer Proprietary Network Information.
- Case No. TX-2003-0487, In the Matter of Proposed Commission Rules 4 CSR 240-36.010, 36.020, 36.030, 36.040, 36.050, 36.060, 36.070, and 36.080 (arbitration and mediation rules).
- Case No. TX-2003-0565, In the Matter of a Proposed Rulemaking to Codify Procedures for Telecommunications Carriers to Seek Approval, Amendment and Adoption of Interconnection and Resale Agreements.
- Case Nos. TX-2004-0153 and 0154, in the Matter of Proposed Rule for 211 Service (emergency and permanent rules).
- Case Nos. TO-2004-0370, IO-2004-0467, TO-2004-0505 et al, In the Matter of the Petition of various small LECs for Suspension of the Federal Communications Commission Requirement to Implement Number Portability.

- Case No. TX-2005-0258, In the Matter of a New Proposed Rule 4 CSR 240-33.045 (placement and identification of charges on customer bills).
- Case No. TX-2005-0460, In the Matter of the Proposed Amendments to the Missouri Universal Service Fund Rules.
- Case No. TO-2006-0093, In the Matter of the Request of Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, for Competitive Classification Pursuant to Section 392.245.6, RSMo (2205) – 30-day Petition.
- Case Nos. TC-2005-0357, IR-2006-0374, TM-2006-0306, the complaint case, earnings investigation and transfer of assets case to resolve issues related to Cass County Telephone Company, LP, LEC Long Distance, FairPoint Communications, Inc., FairPoint Communications Missouri Inc. d/b/a FairPoint Communications and ST Long Distance Inc. db/a FairPoint Communications Long Distance.
- Case No. TC-2006-0068, FullTel, Inc., v. CenturyTel of Missouri, LLC.
- Case No. TX-2006-0169, In the Matter of Proposed New Rule 4 CSR 240-3.570 Regarding Eligible Telecommunications Carrier Designations for Receipt of Federal Universal Service Fund Support.
- Case No. TX-2006-0429, In the Matter of a Proposed Amendment to 4 CSR 240-3.545 (one day tariff filings).
- Case No. TX-2007-0086, In the Matter of a Proposed Rulemaking to Create Chapter 37 – Number Pooling and Number Conservation Efforts
- Case No. TA-2009-0327, In the Matter of the Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Missouri for the Limited Purpose of Offering Lifeline and Link Up Service to Qualified Households.
- Case No. RA-2009-0375, In the Matter of the application of Nexus Communications, Inc. dba TSI for Designation as an Eligible Telecommunications Carrier in the State of Missouri for the Limited Purpose of Offering Wireless Lifeline and Link Up Service to Qualifying Households.
- Case No. AX-2010-0061, Office of Public Counsel's Petition for Promulgation of Rules Relating to Billing and Payment Standards for Residential Customers.

Arbitration Advisory Staff

- Case No. TO-2005-0336, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues For a Successor Interconnection Agreement to the Missouri 271 Agreement ("M2A").
- Case No. IO-2005-0468, In the Matter of the Petition of Alma Telephone Company for Arbitration of Unresolved Issues Pertaining to a Section 251(b)(5) Agreement with T-Mobile USA, Inc.
- Case No. TO-2006-0147 et al, In the Matter of the Petition for Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement with T-Mobile USA, Inc and Cingular Wireless.
- Case No. TO-2006-0299, Petition of Socket Telecom, LLC for Compulsory Arbitration of Interconnection Agreements with CenturyTel of Missouri, LLC and Spectra Communications, LLC, pursuant to Section 251(b)(1) of the Telecommunications Act of 1996.

- Case No. TO-2006-0463, In the Matter of the Petition for Arbitration of Unresolved Issues in a Section 251(b)(5) Agreement with ALLTEL Wireless and Western Wireless.
- Case No. TO-2009-0037, In the Matter of the Petition of Charter Fiberline-Missouri, LLC for Arbitration of an Interconnection Agreement Between CenturyTel of Missouri, LLC and Charter Fiberlink-Missouri, LLC.

Miscellaneous

- Actively participated in or prepared comments on numerous issues on behalf of the Commission to be filed at the Federal Communications Commission.
- Prepared congressional testimony on behalf of the Commission on number conservation efforts in Missouri.