

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its Office in Jefferson City on the 2nd day of September, 2015.

In The Matter of the Revised Tariff Sheets for the)
Laclede Gas and Missouri Gas Energy Operating)
Units of Laclede Gas Company)

File No. GT-2016-0026

ORDER DENYING STAFF’S MOTION TO REJECT TARIFFS

Issue Date: September 2, 2015

Effective Date: September 12, 2015

On August 5, 2015, Staff filed a motion asking the Commission to reject three tariff filings made by Laclede Gas Company. Laclede filed the tariffs on July 21 and they carry a September 8 effective date. Staff’s motion explained the tariffs would change budget billing procedures, bill estimating procedures and line extension provisions for the company’s Laclede and MGE operating units. Staff contended those changes can only be made as part of a general rate case where all relevant factors affecting billing can be examined. Staff’s motion also indicated it had not yet completed a technical review of the tariffs to determine whether they are objectionable on some basis in addition to Staff’s legal argument that they can only be implemented within a general rate case.

In response to Staff’s motion, the Commission directed Laclede to respond to Staff’s motion by August 13. Any other party wishing to respond was directed to do so by August 13. Laclede filed its response on August 12. No other party responded.

Following the Commission's discussion of Staff's motion at its August 19 agenda meeting, the Commission ordered Staff to complete its technical review of the tariffs and to report its findings. Staff was also directed to reply to the legal arguments Laclede made in its August 12 response.

Staff filed its reply on August 24.¹ That reply includes a memorandum prepared by Staff's Energy Department indicating that Staff has performed its technical review of the proposed tariffs. Staff reports the proposed tariffs do not conflict with any Commission rule other than Staff's legal argument that the tariffs can only be changed as part of a general rate case. As a result, Staff's legal argument is the only matter before the Commission.

The Legal Argument

Staff acknowledges the Commission has discretion to allow a tariff to go into effect by operation of law without holding a hearing, but contends the Commission must first consider all relevant factors. Thus, Staff contends, Laclede's tariffs that affect its terms and conditions of service can only be considered in the context of a general rate case where all relevant factors can be considered.

Laclede explains it has two purposes in proposing the revised tariffs. The first is to align the budget billing, bill estimating, and main extension processes and practices of its Laclede and MGE operating units.² The second is to bring the tariffs of both units in line with the changes made to the Commission's Chapter 13 billing rules in 2014.

¹ Laclede filed a response to Staff's reply on August 25 and Staff replied to Laclede's response later that day. Both pleadings merely reiterated earlier arguments.

² Laclede Gas Company recently acquired the former Missouri Gas Energy company in a transaction approved by the Commission in File No. GM-2013-0254.

Laclede indicates none of the tariff changes will increase the rates or charges paid by any customer of either operating unit.

Laclede rejects Staff's single-issue ratemaking argument, contending the Commission has routinely approved similar tariff changes for Laclede and other companies, frequently with Staff's approval, without being concerned about a single-issue ratemaking argument. Laclede points to Section 393.150, RSMo, 2000, as giving the Commission authority to consider these tariff changes outside the confines of a general rate case. Laclede further argues that the changes it is proposing in these tariffs do not fall within the applicable prohibition against single-issue ratemaking established by the courts because these tariff changes are not changing the amounts a customer will pay for gas service. Finally, Laclede contends that if Staff's argument is accepted, no utility could change any of its terms of service without filing a general rate case, a position that was rejected by the Court of Appeals in a 2006 decision upholding the Commission decision to amend its Cold Weather Rule.³

Laclede also explains there is an urgent need to allow its tariff revisions to go into effect quickly. As part of its efforts to consolidate its Laclede and MGE operating units, Laclede is planning to convert MGE from its old customer service system to the newer Customer Care and Billing system that has been used by Laclede since 2013. That conversion will be simpler and less expensive if the customer service provisions of MGE and Laclede are made consistent with each other through the proposed tariff revisions. Laclede wants to make that conversion over the Labor Day weekend, but will be unable to do so if its tariffs are rejected or suspended. Laclede says that if the conversion is

³ *State ex rel. Missouri Gas Energy v. Public Serv. Com'n*, 210 S.W. 3d 330, 334 (Mo. App. W.D. 2006).

delayed, it may be unable to complete the conversion before the start of the winter heating season, and the delay could require it to run duplicative customer service systems at an additional cost to ratepayers.

Decision

Staff contends the Commission has three options when reviewing a tariff submitted by a utility: 1) it can take no action and allow the tariff to take effect by its terms, 2) it can suspend the tariff and conduct a contested case hearing to determine the propriety of the tariff, or 3) it can summarily reject the tariff if the tariff can only be approved after a consideration of all relevant factors that can only occur in a general rate case. The first two options are clearly implied in section 393.150.1, RSMo 2000, which authorizes, but does not require, the Commission to suspend and conduct a hearing to consider a tariff filed by a utility. Staff derives its third option by reference to case law that indicates the Commission must consider all relevant factors when deciding whether to suspend a tariff or allow it to go into effect.⁴ However, Staff's insistence on the need for consideration within a full rate case incorrectly assumes that consideration of all relevant factors affecting these tariffs can only take place within a rate case.

The tariffs in question do not change the amount Laclede and MGE can charge their customers for natural gas service, but they would change the terms and conditions by which the companies offer that gas service to their customers. Staff claims that

⁴ Staff cites *State ex rel. Utility Consumers Council of Missouri, Inc. v. Pub. Serv. Com'n*, 585 S.W.2d 41 (Mo. banc 1979), and *State ex rel. Laclede Gas Co v. Pub. Serv. Com'n*, 535 S.W.2d 561 (Mo. App. 1976) for that proposition.

those changes will affect “how much is billed, when and to whom” and contends that is sufficient to require review of the tariffs through the rate case process. Staff is incorrect.

In examining this very question, the Missouri Court of Appeals has accepted the difference between tariff changes that affect the amounts charged to customers and tariff changes that only affect the terms and conditions of service. In 2006, several utilities challenged the Commission’s promulgation of an emergency cold weather rule that significantly expanded the impact of that rule. One of the arguments the utilities made against the rule was that the changes made by the emergency cold weather rule revision affected the utilities rates and could only be made through the rate case process. In rejecting that argument, the Court of Appeals stated

[t]he ECWR [emergency cold weather rule] does not affect how much the utility may charge for its services, but only how much of that total amount owed by a customer the utility is allowed to collect in order to prevent disconnection or allow reconnection of gas services during the three-month winter window.⁵

On that basis, the court found that including the cold weather rule in the Utilities’ tariffs does not make it a rate whose adjustment would require contested case procedures.

Tariffs that change terms and conditions of service are different than tariffs that change the rates charged by the utility. As a result, the relevant factors to consider regarding those tariffs are also different, and do not fall within the prohibited practice of single-issue ratemaking. The reason single-issue ratemaking is prohibited is a concern that in setting rates based on a change in a single cost, the Commission could be overlooking other costs that have changed in a different direction, leading to rates that do not reflect the utility’s true cost of service. Since Laclede’s tariffs do not change the

⁵ *State ex rel. Mo Gas Energy v. Pub. Serv. Com’n*, 210 S.W.3d 330, 334 (Mo. App. W.D. 2006).

rates charged by the utility, concerns about single-issue ratemaking are misplaced, and the utility's cost of service is not a relevant factor the Commission must consider when deciding whether to suspend or reject these tariffs.

In evaluating these tariffs, the Commission has considered that allowing Laclede to apply consistent customer service practices and standards to its Laclede and MGE divisions is an appropriate goal and will likely result in cost savings to the utility's customers. Most importantly, the Commission has considered that Staff's review indicates the tariffs do not conflict with any Commission regulation, aside from Staff's concern that the rules can only be changed in the context of a rate case. The Commission finds that these, not the utility's cost of service, are the relevant factors. Based on its review of those factors, the Commission finds that Staff's motion to reject tariff sheets should be denied.⁶

For purposes of allowing sufficient time for the filing of an application for rehearing, the Commission will make this order denying Staff's motion effective ten days after it is issued. However, because the Commission is taking no action to suspend or reject Laclede's tariffs, they will go into effect on their designated effective date of September 8.

⁶ Staff's reply to Laclede's response suggests the Commission's decision that Laclede's tariff should not be suspended or rejected must be based on competent and substantial evidence. Staff is incorrect. Nothing requires the Commission to undertake a hearing before deciding whether to suspend or reject a tariff, therefore, this is a non-contested case. The Missouri Court of Appeals in *State ex rel Public Counsel v. Pub. Serv. Com'n* 210 S.W.3d 344 (Mo. App. W.D. 2006) specifically found that the Commission's decision in a non-contested case to not suspend challenged tariffs does not have to be supported by competent and substantial evidence.

THE COMMISSION ORDERS THAT:

1. Staff's Motion to Reject Tariff Sheets is denied.
2. This order shall be effective on September 12, 2015.



BY THE COMMISSION

Morris L. Woodruff

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney, Rupp,
and Coleman, CC., concur.

Woodruff, Chief Regulatory Law Judge