

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

In the Matter of Laclede Gas Company's Tariff Revision)	<u>File No. GT-2009-0056</u>
Designed to Clarify Its Liability for Damages Occurring)	Tariff No. JG-2009-0145
On Customer Piping and Equipment.)	

CONCURRING OPINION OF COMMISSIONER TERRY M. JARRETT

I concur in the Report and Order but write separately to clarify my understanding of the law regarding limitations on liability of utilities.

As I understand it, Laclede filed a tariff giving it a complete defense against damages for its acts so long as it complies with the Commission's gas safety regulation. This means that it would have no liability for negligent, willful and wanton conduct. I believe that such a blanket liability limitation is contrary to Missouri law.

The Report and Order correctly cites *Warner v. Southwestern Bell Telephone Company*, 428 S.W.2d 596 (Mo. 1968), for the proposition that this Commission has authority to regulate a utility's liability to some extent. *Id.* at 601-02. The *Warner* court further concludes "that the limitation of [the utility's] liability was and is effective if [the utility's] conduct was merely negligent, but that it does not constitute an exemption for willful and wanton conduct." *Id.* at 603.¹ Limiting liability for willful and wanton conduct is against public policy in Missouri. *Id.* ("A bargain for exemption from liability for the consequences of a willful breach of duty is illegal".)

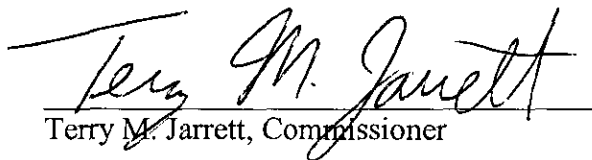
The purpose of the Commission's gas safety regulation is to provide minimum standards for safe and adequate service, not to establish a duty or standard of care for torts committed by a

¹ See also *Engman v. Southwestern Bell Tel. Co.*, 591 S.W.2d 78, 80-81 (Mo. App.W.D. 1979); *Khulusi v. Southwestern Bell Yellow Pages, Inc.*, 916 S.W.2d 227, 230 (Mo. App.W.D., 1995).

utility. During its promulgation, the regulation was not vetted with the additional purpose of creating a bar to civil liabilities.

As the cases recognize, reasonable limits on liability are acceptable, but what Laclede sought here was to have this Commission create an absolute bar to liability should Laclede be able to demonstrate that it has met the standards announced in the applicable rule. In my opinion, the cases do not allow this Commission to go as far as Laclede suggests. Laclede's proposal would create a "complete defense" to any action against Laclede, while also imposing a duty upon the customer to "indemnify, hold harmless and defend" Laclede in any such action.

I believe that Laclede could issue a lawful tariff limiting its liability for negligent conduct, but not for willful and wanton conduct. To the extent that the Report and Order seems to indicate that such a tariff would not be lawful or appropriate in any case², I would respectfully disagree.


Terry M. Jarrett, Commissioner

Submitted this 4th day of February, 2010.

² *Report and Order*, pp. 12-13.