

Exhibit No.:
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Witness: Robert R. Leonberger
Sponsoring Party: MO PSC Staff
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MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

SURREBUTTAL TESTIMONY

OF

ROBERT R. LEONBERGER

LACLEDE GAS COMPANY

CASE NO. GT-2009-0056

**Jefferson City, Missouri
September 2009**

1 A. The statement contained on page 3, lines 13-16.

2 *I am concerned that Laclede's modified tariff language weakens customer*
3 *protection and weakens the Company's incentive to provide safe and adequate*
4 *service. The Company's proposal to limit its liability under all circumstances,*
5 *even when it is negligent...".*
6

7 Q. Do you agree with this statement?

8 A. No. The tariff language proposed by Laclede does not change the safety
9 requirements that Laclede must meet pursuant to state and federal regulations. Under 4 CSR
10 240-40.030(10)(J) and (12)(S) Laclede is required to test the customer-owned fuel line for
11 leakage and conduct a visual inspection of exposed, accessible customer-owned gas piping
12 and all connected equipment when natural gas service is turned on to customers to determine
13 that the requirements of any applicable industry codes, standards or procedures adopted by the
14 Company to assure safe service are met. These safety rules are not part of the Federal
15 Pipeline Safety Regulations and are additional, more stringent safety requirements placed on
16 the gas utilities by the Missouri Public Service Commission (Commission). Missouri is one
17 of the few states that require the additional safety inspection.

18 In addition, under rule 4 CSR 240-40.030(12)(S)3., Laclede is required to
19 "...discontinue service to any customer whose fuel lines or gas utilization equipment are
20 determined to be unsafe." This would apply to all inspections or work conducted by Laclede
21 – even the non-regulated service work whose revenues go toward ratemaking. Laclede's
22 customers and all citizens in the state of Missouri are safer because of these more stringent
23 regulations.

24 Q. If there have been no changes to the regulations, requirements and reasons for
25 the inspections, then why is Staff supporting the proposed tariff language?

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1 A. The purpose and the principle followed by the Staff during the tariff review
2 process and subsequent discussions with Laclede were focused on identifying circumstances
3 where Laclede should be responsible for loss, damage or injury. However, from an
4 operational standpoint, the Staff does not believe the Company's proposed tariff language
5 limits its liability "even when it is negligent" as Ms. Meisenheimer asserts (witness
6 Meisenheimer's testimony, page 3, line 15-16). Laclede's negligence would be a matter for
7 legal interpretation and finding. Staff views the proposed tariff as a means to give protections
8 to all ratepayers by excluding them from shouldering the costs associated with claims and
9 lawsuits related to an individual claim in situations where Laclede is not responsible.

10 Q. Is there another section in OPC witness Meisenheimer's testimony that relates
11 to this same issue?

12 A. Yes. Again at page 4, lines 7-9 (*"Limiting Laclede's Liability regardless of*
13 *fault of negligence or the degree of fault or negligence does not serve the public interest. The*
14 *customer should not be assigned liability for all risks, loss and damages..."*).

15 Q. What are your comments in response to this statement?

16 A. The Staff has worked with Laclede to revise the proposed tariff language to
17 ensure Laclede is accountable when it is responsible (i.e., when Laclede is negligent or at
18 fault), but limits its liability in instances where the Company is not responsible. Staff does
19 not believe individual customers are being assigned the liability for "all risk, loss, and
20 damages" through the proposed tariff language as asserted by Ms. Meisenheimer. Quite to
21 the contrary, it is in all customers' interest to address the issue of how long Laclede may
22 reasonably be considered to be responsible for its service. Under the proposed tariff, Laclede
23 remains responsible when individuals sustain loss, damage, or injury attributable to actions or

1 inaction by Laclede. The proposed tariff provides some protection to Laclede in cases where
2 the loss, damage or injury is not a result of Laclede's actions or inaction. The Staff believes
3 that the parameters set by the proposed tariff provide a reasonable accommodation of interests
4 and balance the interests of potential claimants with those of the ratepayers and the Company.

5 Q. From an operational perspective, do you agree with the statement contained on
6 page 3, lines 17-24 of OPC witness Meisenheimer's testimony?

7 A. In her testimony on page 3, lines 17-24, witness Meisenheimer asserts:

8 *The Company's proposal unreasonably shifts the risk to customers. When*
9 *damage or loss occurs, whether or not fault can be assigned, individual*
10 *customers may not have the financial wherewithal to sustain the loss or the*
11 *ability to insure against this loss at a reasonable price. Public utilities have*
12 *historically acted to spread the risk among and on behalf of all ratepayers in*
13 *order to gain cost efficiencies and avoid catastrophic loss at a reasonable*
14 *price. Insurance coverage purchased by the Company is a reasonable method*
15 *of spreading risk rather than saddling an individual home owner with the loss.*
16

17 The position that OPC witness Meisenheimer seems to be taking in her testimony is
18 contrary to the Staff's view and at odds with the charge of the Commission to balance the
19 needs of the Company and ratepayers and to provide just and reasonable rates. It appears
20 from OPC witness Meisenheimer's position, as stated above, that Laclede should be the
21 "insurer of last resort" or "group insurer" for all customers, "whether or not fault can be
22 assigned", because Laclede-purchased insurance coverage can spread the risk of losses over
23 all ratepayers rather than saddling an individual homeowner with the loss. However, as
24 claims costs increase, it logically follows that Laclede's insurance costs will likewise
25 increase, causing a corresponding increase in rates.

26 Q. Do you agree with Ms. Meisenheimer's position?

27 A. No. The primary focus and approach of the Staff efforts in this case are just
28 the opposite of Ms. Meisenheimer's position. It is the Staff's position that risks should not be

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1 shifted to all ratepayers when Laclede is not responsible for the loss, damage or injury. The
2 Company should be responsible for its negligence or when its equipment malfunctions or if
3 the actions of its employees result in loss, injury, or damages to the customer - whether it is
4 on Company piping or past the point of delivery on customer-owned piping or equipment.
5 The mission of the PSC is to balance the interests of the Company and the ratepayers...that is,
6 all ratepayers. Laclede's ratepayers should not be held responsible for, and saddled with,
7 providing "insurance coverage" to an individual homeowner because the homeowner "...may
8 not have the financial wherewithal to sustain the loss or the ability to insure against this loss at
9 a reasonable price" (Meisenheimer Rebuttal Testimony page 3, lines 19-20). Laclede, and
10 ultimately Laclede's ratepayers, should not be expected to pay for losses, damages, or injuries
11 for which Laclede is not responsible just because a customer does not have the financial
12 wherewithal to sustain the loss.

13 Q. Ms. Meisenheimer addresses six "Specific Concerns with the Tariff
14 Language". What is the "First Concern" contained in witness Meisenheimer's Surrebuttal
15 Testimony?

16 A. On page 4, lines 18-20, witness Meisenheimer lists her first concern as:

17 *1) The modified tariff language is over broad in defining compliance with*
18 *duties and obligations in providing gas service and in limiting liability related*
19 *to accident or negligence.*

20 Q. Do you agree with the statement in the "First Concern" above that the tariff is
21 over broad in defining compliance with duties and obligations?

22 A. No. In general, the proposed tariff section, which witness Meisenheimer
23 quotes on page 5, lines 15-32 of her rebuttal testimony, states that Laclede is responsible for
24 providing natural gas to the customer without excess water or debris in the gas that would
25 interfere with or adversely affect the safe operation of customer equipment and Laclede must

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1 adhere to all PSC Regulations. If those conditions are met, then the Company's responsibility
2 has been met. In discussing this concern, witness Meisneheimer states that compliance with a
3 limited number of Commission rules should not be considered full compliance with all duties
4 and obligations (page 5, lines 12-13 and lines 34-35). The Commission's 4 CSR 240-40.030
5 Safety Standards-Transportation of Gas by Pipeline rule (PSC Pipeline Safety Regulations)
6 are very detailed and are very specific on requirements of initiating service and discontinuing
7 service to any customer when fuel lines or gas utilization equipment are determined to be
8 unsafe. In addition, the PSC Pipeline Safety Regulations contain numerous other specific
9 safety requirements specifically related to customer safety, none of which are changed by the
10 proposed tariff. In addition, as previously discussed, the PSC Pipeline Safety Regulations are
11 more stringent than the Federal minimum pipeline safety regulations and the Gas
12 Safety/Engineering Section of the Commission Staff conducts comprehensive inspections of
13 Laclede to check for compliance to these regulations. Finally, on page 5, line 36-37 through
14 page 6, line 1, witness Meisenheimer states, "...in the Purpose section of 4 CSR 240-40.030
15 and part 1(a) of 49 CFR Part 192 the rules provide only the minimum safety requirements an
16 LDC is required to follow". Even though 4 CSR 240-40.030 prescribes the minimum safety
17 standards regarding the design, fabrication, installation, construction, metering, corrosion
18 control, operation, maintenance, leak detection, repair and replacement of pipelines used for
19 the transportation of natural and other gas, these regulations are much more stringent than the
20 minimum safety standards contained in the Code of Federal Regulations. One of the
21 significant areas where the Commission rules are more stringent are the requirements to
22 inspect inside piping and equipment in accordance with 4 CSR 240-40.030(10)(J) and (12)(S).

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1 Q. Do you have any other comments related to the “First Concern” raised by Ms.
2 Meisenheimer?

3 A. Yes. Ms. Meisneheimer asserts (page 6, lines 7-9) that the underlined tariff
4 language (page 6, lines 15-39) “imposes extreme liability limitations on virtually every
5 activity affecting gas service at the customer premise including limiting liability for accident
6 or negligence.” The underlined portion selected by Ms. Meisenheimer indicates the Company
7 would not be in default of its service agreement or liable for any damage or loss occasioned
8 by interruption, failure to commence delivery, or failure of service or delay in commencing
9 service due to accident to plant, lines, or equipment. However, Ms. Meisenheimer ignored the
10 rest of the sentence in the proposed tariff. The rest of the sentence goes on to state these
11 conditions are applicable when there are “...strikes, acts of God, order of any court or judge
12 granted in any bonafide adverse legal proceeding....any other act or things due to causes
13 beyond the Company’s control”. Simply stated, Laclede would not be considered responsible
14 or in default when the situation is out of its control as stated in the quote above as long as
15 Laclede was not violating any Commission Regulations or delivering gas containing
16 “constituents”.

17 Q. Ms. Meisenheimer states (page 6, line 31-32) that the “broad terms...result in
18 total exemption...except for normal charges”. What is your interpretation of this language?

19 A. The “terms” are for situations “under this paragraph,” which again are
20 circumstances beyond the Company’s control. So, from an operational standpoint, the
21 limitations are for the very specific conditions I quoted above.

1 Q. On page 7, lines 16-17, witness Meisenheimer states "...the Company seeks
2 relief from liability due to negligence...." In your opinion will Laclede be released from
3 liability due to negligence?

4 A. While Laclede's "negligence" would need to be legally interpreted, it is not the
5 Staff's intent to give Laclede relief from responsibility when it is negligent. Again, the Staff
6 suggests the proposed tariff would hold Laclede responsible in instances it is, or may be,
7 responsible and does not give it automatic "relief from liability due to negligence".

8 Q. Ms. Meisenheimer's "Second Concern" is as follows:

9 *2) The Company's modified tariff language tariff does not make clear that the*
10 *liability limitations would apply only to regulated services.*

11 Should the tariff make clear that the liability would apply to only regulated services?
12

13 A. No. The proposed tariffs should apply to all of Laclede's actions when, as
14 explained by Staff witness Kimberly Bolin, the actions result in costs and revenues considered
15 in the ratemaking process. Furthermore, as stated previously, the Commission's Pipeline
16 Safety Rules always apply to Laclede. The tariff language quoted by witness Meisenheimer
17 on page 8, lines 21-22 ("...or unless the Company expressly agrees in writing to assume such
18 obligations."), states that Laclede is normally responsible when it performs those unregulated
19 functions - for example, doing repairs to customer piping and equipment under an agreement
20 with the customer. Another example of a nonregulated service performed by the regulated
21 entity is the Home Sale Inspection. As stated on page 3 of my testimony, 4 CSR 240-
22 40.030(12)(S)3. requires Laclede to "...discontinue service to any customer whose fuel lines
23 or gas utilization equipment are determined to be unsafe". Even though a Home Sale
24 Inspection is not required by the PSC Pipeline Safety regulations, Laclede is still bound by
25 the PSC Pipeline Safety Regulations and must discontinue service if equipment or fuel lines

1 are determined unsafe; thus providing an additional protection to the customers. This gives
2 customers additional safety protection when Laclede performs “unregulated” work whose
3 revenues go toward ratemaking.

4 Q. The “Third Concern” states:

5 *3) The Company’s modified tariff language should not be used to relieve*
6 *shareholder liability for unregulated product or service offerings.*

7 Do you agree with the statement in the “Third Concern” that the tariff is used to
8 relieve shareholder liability for unregulated product or service offerings?

9 A. Not necessarily. The tariff does not “relieve” the shareholder responsibility for
10 unregulated products or service offerings when the Company is responsible, within prescribed
11 time limitations. Further, when there is a claim against the Company, it will probably not be
12 just a “shareholder liability”, but a liability to all the ratepayers. The proposed tariff language
13 does contain time-limited provisions termed “non-incident operational period” that would
14 apply to “unregulated product or service offerings”. These provisions provide periods of time
15 that would reasonably limit Laclede’s responsibility for the provided services, and are similar
16 in duration to the “warranty provisions” offered for similar services by St. Louis area HVAC
17 businesses. Again, absent the “non-incident operational period” provisions, Laclede’s
18 ratepayers would be exposed to paying in rates for claims made by customers over an
19 unlimited period of time.

20 Q. A statement is made on page 10, line 31 through page 11, line 2, in witness
21 Meisenheimer’s testimony, that the proposed tariff language (contained on page 11, lines 3-12
22 witness Meisenheimer testimony) “...appears to limit liability associated with unregulated
23 services...” Do you agree that this language appears to limit liability associated with
24 unregulated services?

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1 A. No. This portion of the tariff quoted by witness Meisenheimer in testimony
2 must be read in context with the rest of the paragraph. Witness Meisenheimer’s testimony
3 addresses limiting liability associated with unregulated services. However, as noted on page 8
4 of my testimony, the limits of liability of Laclede’s service agreement only apply to
5 “...strikes, acts of God, order of any court or judge granted in any bonafide adverse legal
6 proceeding...any other act or things due to causes beyond the Company’s control”. Therefore,
7 the Company is not gaining a competitive advantage or insulating itself from all liability
8 related to unregulated services in this tariff language, but only for those beyond its control.
9 More simply stated, the tariff language reads, Laclede “...shall not otherwise be liable for any
10 damage or loss...due to accident to plant, lines, or equipment...” when there are situations
11 “...beyond the Company’s control...” as noted (strike, riot, acts of God, etc.). Laclede would
12 not be responsible for damage or loss caused by interruption, failure to commence delivery, or
13 failure of service, or delay in commencing service in those instances when those
14 damages/losses were “beyond Company’s control...”. However, the proposed tariff language
15 does not limit Laclede’s responsibility for all unregulated services.

16 Q. The “Fourth Concern” states:

17 4) *The modified tariff language is ambiguous regarding the obligation to*
18 *provide gas free of constituents.*
19

20 Do you agree with the statement in the “Fourth Concern” that the tariff is ambiguous
21 regarding the obligation to provide gas free of constituents?

22 A. No. Nor do I believe, as asserted by Ms. Meisenheimer, that the proposed
23 tariff language contained on page 12, lines 18-23 of her testimony (“Company will use
24 reasonable diligence to furnish to Customer continuous gas service with natural gas that does
25 not contain constituents (water or debris) that would materially adversely affect the proper

1 and safe operation of Customer Equipment, but does not guarantee the supply of gas service
2 against irregularities or interruptions.”) weakens or contradicts the tariff provisions cited on
3 page 12, lines 7-10 of her testimony (“The Company shall be responsible for the safe
4 transmission and distribution of gas, free of constituents (water or debris) that materially
5 interfere with or adversely affect the safe and proper operation of Customer Equipment...”).
6 Laclede is responsible for providing gas free of constituents that materially interfere with or
7 adversely affect the safe and proper operation of customer equipment. The tariff further
8 defined “constituents” as water or debris. There have been past instances where Staff
9 identified water in the pipeline or debris in the pipeline that has caused outages, as well as,
10 required labor and/or repairs to customer facilities/equipment.

11 The second tariff section quoted by Ms. Meisenheimer (lines 18-23) states that
12 Laclede will use reasonable diligence to provide “continuous” service, but that it cannot
13 guarantee against irregularities/interruptions. Even though Laclede cannot “guarantee” there
14 will not be irregularities/interruptions, the proposed tariff does not exempt Laclede in
15 instances where it should have used reasonable diligence to furnish continuous gas service
16 free of constituents and delivered in a safe manner.

17 Q. The “Fifth Concern” states:

18 *5) The modified tariff language should not be used to relieve*
19 *shareholder liability when the Company fails to conduct regular*
20 *inspections required by Commission rules.*
21

22 Do you agree with the statement in the “Fifth Concern” that the tariff language could
23 be used to relieve shareholder liability when the Company fails to conduct regular inspections
24 required by the Commission Rules?

1 A. No. The shareholder is not being relieved of liability and the Staff does not
2 understand the point OPC's is trying to make. First, any "liability" would likely be borne by
3 the ratepayers, not the shareholders. Staff witness Kim Bolin addresses how ratepayers pay
4 the cost of claims against Laclede. Second, if Laclede failed to perform an inspection within
5 the required time period, then it would be in violation of Commission Rules. If loss or
6 damages occurred, Laclede would be responsible and it would not be shielded from
7 responsibility since it would be in violation of a PSC regulation.

8 Q. On page 12, lines 33-36, OPC witness Meisenheimer underlines a portion of
9 the proposed tariff language to emphasize her point that the Company might be shielded if it
10 misses an inspection. What is your understanding of the underlined language?

11 A. The underlined portion of the proposed tariff contained in witness
12 Meisenheimer's testimony (page 12, lines 33-36), states that Laclede should not be held
13 responsible to "provide warnings" to the customer of dangerous conditions unless it did, or
14 could have had knowledge of the condition. However, the language is limiting the obligation
15 to provide warnings to those obligations imposed by the several Commission Rules quoted on
16 page 12, lines 39-40 through page 13, lines 1-3 of Ms. Meisenheimer's testimony.

17 Q. The "Sixth Concern" states:

18 *6) The modified tariff language may impact the Company's revenue*
19 *requirement and is therefore best addressed in a rate case.*
20

21 Do you agree with the statement in the "Sixth Concern" that the tariff language may
22 impact the Company's revenue requirement and would be best addressed in a rate case?

23 A. No. As discussed by other Staff witnesses, the modified tariff language may
24 impact the Company's revenues, but these amounts are unknown. Furthermore, the proposed
25 tariff is intended to limit Laclede's responsibility and unnecessary costs to ratepayers only in

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1 situation where Laclede can not reasonably be held responsible. Staff maintains that OPC's
2 position unfairly shifts risk and costs to ratepayers by making Laclede, in essence, a "group
3 insurer". OPC's position puts the ratepayers at risk for providing an unlimited "warranty" on
4 unregulated products and services, as well as paying for unnecessary litigation "whether or
5 not fault can be assigned" (Meisenheimer page 3. line 18) to Laclede for those events.

6 Q. Does this conclude your surrebuttal testimony?

7 A. Yes, it does.