

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

In the Matter of Laclede Gas Company's)	
tariffs designed to permit early)	
implementation of Cold Weather Rule)	Case No. GT-2009-0026
provisions and to permit Laclede to collect)	Tariff number JG-2009-0033
the gas cost portion of its write-off's)	
through the PGA)	

**LIST OF ISSUES, STATEMENTS OF POSITION, ORDER OF WITNESSES,
ORDER OF CROSS-EXAMINATION, AND ORDER OF OPENING**

COMES NOW Laclede Gas Company ("Laclede" or "Company"), the Staff of the Missouri Public Service Commission ("Staff") and the Office of the Public Counsel ("OPC") and submit the following List of Issues, Statements of Position, Order of Witnesses, Order of Cross-Examination, and Order of Opening in the above captioned proceeding:

List of Issues

1. Can the Commission lawfully permit Laclede to recover the gas portion of its uncollectible revenues (bad-debt expense) through the PGA/ACA process?
2. If the answer to No. 1 is "yes," then can the Commission permit Laclede to recover the gas portion of its uncollectible revenues (bad-debt expense) through the PGA/ACA process by modifying its PGA/ACA tariff outside of a general rate case?
3. If the answer to Nos. 1 and 2 are "yes," then should the Commission permit Laclede to recover the gas portion of its uncollectible revenues (bad-debt expense) through the PGA/ACA process?

Statements of Position

LACLEDE

Issue 1: Yes. Laclede believes that its tariff proposal to reflect and reconcile changes in the gas cost portion of its bad debt write-offs through the PGA/ACA mechanism is fully consistent with Missouri law and that the Commission has the requisite authority to approve it. Such gas costs are indistinguishable from the commodity, pipeline transportation and storage costs that are already being recovered by Laclede through the PGA/ACA mechanism. Notably, that same PGA/ACA mechanism has been used by Laclede, in one form or another, for nearly a half century to reflect increases and decreases in such gas costs. Moreover, the Western District Court of Appeals has explicitly upheld the lawfulness of the mechanism, holding that it does not run afoul of either the prohibition against single issue ratemaking or the prohibition against retroactive ratemaking.

In reaching that conclusion, the court found that the PGA/ACA mechanism was distinguishable from the fuel adjustment clause that had previously been deemed unlawful for electric utilities because “[t]he gas costs which the PGA mechanism allows the companies to pass on [to customers through a surcharge] are almost entirely the cost of obtaining the gas itself; they do not include the type of labor and materials costs used in making electricity.” *State ex rel. Midwest Gas Users' Ass'n v. Public Service Comm'n*, 976 S.W.2d 470, 482 (Mo.App. W.D. 1998) (“*MGUA*”). Similarly, the bad debt-related gas costs which Laclede seeks to prospectively recover through the PGA/ACA mechanism are also the “cost of obtaining the gas itself” and “do not include the type of labor and material costs” used in distributing natural gas to customers. The

mere fact that such costs have not been paid by a particular customer does absolutely nothing to change either the intrinsic nature or characteristics of such costs. Accordingly, under the clear precedent established in *MGUA*, the Commission has definite and unambiguous authority to determine that such costs should likewise be recovered through the same PGA/ACA mechanism that is also used to recover all other gas costs. Moreover, because the proposed tariff would only operate prospectively, it is clear that it does not run afoul of any prohibition against unlawful retroactive ratemaking.

Issue 2: Yes, the Commission has made or considered changes to utility tariffs, rules and ratemaking mechanisms between rate cases that are similar to those proposed by the Company in this case without any apparent concern or argument that such changes needed to be made in a rate case. These include, among others, consideration or approval of gas supply incentive plans, PGA rate design changes and cold weather rule service requirements. In fact, the original establishment of the PGA was effected outside of a rate case. In view of these considerations, there is no basis in either law or fact for suggesting that the Company's proposed tariff modification must be made in a general rate case proceeding. Nor is there anything in the Stipulation and Agreement approved by the Commission in Laclede's last rate case that would in any way preclude Commission consideration of Laclede's tariff proposal in this case.

Issue 3: Yes. Laclede's tariff proposal to reflect and reconcile changes in the gas cost portion of its bad debt write-offs through the PGA/ACA mechanism should be approved by the Commission, because it is not only just and reasonable, but also because it clearly represents a more appropriate mechanism for addressing such costs than the current method. In fact, the same exact considerations that have warranted the

recovery of all other gas costs through the PGA mechanism also justify inclusion of these gas costs in the PGA.

In addition to being identical to the other gas costs that are already being recovered through the PGA/ACA mechanism, the gas cost portion of bad debt write-offs are volatile in nature, subject to market forces that are beyond the utility's ability to control, and profoundly influenced by changes in regulatory requirements governing the terms and conditions under which Laclede must provide service to its customers. These factors, in turn, make such costs extremely difficult to predict and more suitable for PGA/ACA treatment than for base rate treatment. Moreover, such treatment would be fully consistent with the Commission-approved tracking and recovery of other cost items subject to volatility and significant changes beyond the control of the utility, such as pensions, OPEBs and cold weather rule compliance costs.

The Company's tariff proposal would more suitably address the factors affecting these costs by permitting it to track and reconcile such costs on an actual basis, thereby ensuring that Laclede ultimately charges for, and its customers ultimately pay for, utility service that more accurately reflects the Company's actual cost of providing such service. At the same time, by continuing to place the Company at risk for increases or decreases in the one-fourth to one-third of its bad debt write-offs that are related to providing distribution services, the proposal ensures that the Company would still have a robust incentive to aggressively pursue collection of amounts owed by its customers, within the confines of the Commission's rules. Many of these same considerations have led 24 other jurisdictions to approve similar mechanisms for more than 40 utilities, and Laclede

submits that there are compelling reasons for this Commission to do the same by approving the Company's tariff proposal in this case.

STAFF:

Issue 1: No. The tariff as proposed is not lawful. The PGA/ACA mechanism is lawful only if it is limited to actual direct gas costs. Additionally, the proposed tariff would violate the prohibition against single issue ratemaking. Commission is required to consider all relevant factors to change bad debt expense and it cannot do so in this procedure. Missouri law prohibits single issue ratemaking. Missouri statutes and case law bar the Commission from allowing a public utility to change an existing rate without consideration of all relevant factors. § 392.240.1; *State ex rel. Mo. Water Co. v. Pub. Serv. Comm'n*, 308 S.W.2d 704, 718-720 (Mo.1957); *State ex rel. Utility Consumers Council of Mo., Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 56-58 (Mo.banc 1979).

Contrary to Laclede's assertion the intent of the PGA clause is to permit recovery of all gas costs, an automatic adjustment is limited to direct gas costs. The Courts found: "[w]hile the technicalities of Missouri's PGA clause have varied over the years, the clause's basic function has remained the same: a PGA clause allows a local distribution company to automatically adjust the rates it charges its customers in proportion to the change in the rate the local distribution company is charged by its **wholesale suppliers**." *State ex rel. Midwest Gas Users' Ass'n v. Public Service Comm'n*, 976 S.W.2d 470 (Mo.App. W.D. 1998)(emphasis added). Further, the fact that Laclede proposes to use an estimate proves it cannot accurately determine what portion of bad debt is directly related to actual gas costs.

Issue 2: **No.** Currently the only circumstance under which Laclede could lawfully propose to change the recovery mechanism for bad debt expense is in a rate case. Even in a rate case, inclusion of bad debt in the Purchased Gas Adjustment (PGA) would be unlawful because bad debt is not a direct gas cost. Only costs which cannot be offset by changes (reductions) in other costs are permitted to be recovered through a pass-through to customers. *State ex rel. Utility Consumers Council of Mo., Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 56-58 (Mo.banc 1979).

Further the courts have defined PGA/ACA costs as the direct gas costs a utility pays its wholesalers, and over which it has little if any control. Bad debt costs are completely different in nature in that they are largely within the control of the utility through, among other things, aggressive debt collection, credit checks on applicants, requirement of a deposit, and service shut-offs.

Bad debt is a cost of doing business. Bad debt is already included in Laclede's base rates. Laclede's rate permits it to recover 100% of bad debt through its customer charge. Since bad debt expense may be offset by reductions in other costs, the Commission may only consider this in a rate case.

Issue 3: **No.** This proposal is not in the public interest for numerous reasons including: (a) Laclede currently recovers all its bad debt through base rates; (b) this proposed tariff reduces or even removes Laclede's incentive to act in the interest of its customers to aggressively pursue bad debt; (c) the proposal does nothing to address the reduction in Laclede's risk and the shift of risk to customers; (d) the rate case process is designed to protect the public interest by considering all relevant factors, granting this proposal would not afford that protection; and (e) there is a real possibility Laclede will

over recover and be able to shield that fact from full audit by complicating the recovery process.

OPC:

Issue 1: No. 1) If approved, the tariff and the Commission's Order would violate the prohibition against single-issue ratemaking because it would authorize rate increases without considering all relevant factors. 2) It would also violate the statutory prohibition against retroactive ratemaking, as interpreted by the Supreme Court of Missouri, because the Commission cannot 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. 3) Under the Uniform System of Accounts (USOA) adopted by the Commission, uncollectible expenses are not gas costs; and 4) It would violate the Commission-approved Agreement between the parties that resolved all issues in Laclede's last rate case, Case No. GR-2007-0208.

Issue 2: No. Even if the Commission has the authority to include the gas costs portion of uncollectible expense in the PGA/ACA mechanism, authorizing the rate design modification outside of a general rate case would violate the prohibition against single-issue ratemaking because it would not consider all relevant factors.

Issue 3: No. Even if the proposed tariff filing is lawful, and can lawfully be approved outside of a general rate case, the proposed tariff is not reasonable nor in the public interest because: 1) Under the Uniform System of Accounts (USOA), uncollectible expenses are not gas costs; 2) Including routine and ongoing expenses in a tracker mechanism could create a "slippery slope" and risk a dismantling of the carefully balanced fixed rate system established by the legislature; 3) It could result in an increase

in rates without considering all relevant factors; 4) It would violate the consumers' right to due process because it would redetermine rates already established and paid; 5) It would reduce Laclede's incentive to pursue collections, which would increase bad debts and increase rates for all consumers; and 6) It would violate the terms of an Agreement between Laclede and the parties to Laclede's last general rate case, which is unconscionable and could prove detrimental to the willingness of parties to reach settlement agreements with Laclede in the future.

Order of Witnesses

Laclede: Michael Cline, Glenn Buck, Russell Feingold

Staff: Gay Fred, Lisa Kremer, Tom Solt, David Sommerer.

OPC: Russell Trippensee

Order of Cross-Examination

For Laclede Witnesses: Staff, OPC

For Staff Witnesses: OPC, Laclede

For OPC Witness: Staff, Laclede

Order of Opening

Laclede, Staff, OPC

WHEREFORE, for the foregoing reasons, the parties request that the Commission accept this proposed List of Issues, Statements of Position, Order of Witnesses, Order of Cross-Examination, and Order of Opening.

Respectfully submitted,

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing pleading was served on all parties of record on this 3rd day of December, 2008 by email, facsimile, hand-delivery or by placing a copy of such pleading, postage prepaid, in the United States mail.

/s/ Rick Zucker