

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

In the Matter of the PGA Filing for)
Laclede Gas Company.)

Case No. GR-2004-0273

**BRIEF OF THE MISSOURI
OFFICE OF THE PUBLIC COUNSEL**

This case is to determine Laclede Gas Company's ("Laclede") Actual Cost Adjustments (ACA) for 2003-2004. The primary issue to be resolved by the Missouri Public Service Commission ("Commission") is whether Laclede's decision to continue purchasing gas at first of month (FOM) pricing was prudent. The evidence in this case demonstrates that Laclede failed to respond to market changes and failed to alter its purchasing practices when such market changes made Laclede's existing practices imprudent. Laclede's captive customers should not be forced to pay for these imprudent decisions. Public Counsel concurs with the position of Staff and asks that the Commission issue a decision disallowing the excessive \$2 million identified by Staff.

1. Standard of Commission Review

In State ex rel. Midwest Gas Users' Association v. Office of Public Counsel, 976 S.W.2d 470, 483 (Mo. App. 1998), the Missouri Court of Appeals for the Western District explained that the Commission has the authority to determine how gas distribution companies will be permitted to allocate gas costs among customers and to review the prudence of a company's "decision to enter into a particular contract when a less costly alternative is available." The Commission does not conduct a prudence review of the purchased gas

adjustment (PGA) before it goes into affect, and may disallow some or all of the adjustment sought when fuel costs are “unreasonable or the result of imprudent purchases.”¹ This review is necessary to ensure all charges are just and reasonable as required by Section 393.130.1 RSMo 2000.

The Commission applies certain standards during an ACA review. In State of Missouri ex rel. Associated Natural Gas Company v. Public Service Commission, 954 S.W.2d 520 (Mo. App. W.D. 1997), the Western District explained:

The PSC has employed a “prudence” standard to determine whether a utility’s costs meet this statutory requirement. If a utility’s costs satisfy the prudence standard, the utility is entitled to recover those costs from its customers. ... Where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.

In *ANG v. PSC*, the Court stated that the prudence standard adopted by the Commission is to judge the reasonableness of the company’s conduct “at the time, under all circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight.” The Western District concluded that the Commission must not base its decision on recoverability of gas costs without reference to any detrimental impact of those practices on the company’s charges to its customers. Such a detrimental impact could include evidence that the costs which the company seeks to pass on to its customers are “unjustifiably higher than if different purchasing practices had been employed.”

The Commission adopted rule 4 CSR 240-40.018 *Natural Gas Price Volatility Mitigation* effective December 30, 2003. This rule codifies a service utility companies should have already been providing for their customers – a prudent effort to mitigate upward natural gas price volatility and to secure adequate natural gas supplies for their customers. Gas utilities must

¹ *Midwest Gas Users Assoc.*, 976 S.W.2d at 483.

consider “a broad array of pricing structures, mechanisms, and instruments” and must continuously analyze earlier decisions to identify changes that would mitigate volatility. Laclede did not consider a broad array of pricing structures and simply continued a pricing structure considered in 1996, the result being detrimental gas costs to ratepayers and profit to Laclede.

2. Argument: \$2 Million of the 2003-2004 Gas Purchases Were Imprudent

Laclede’s FOM purchasing practices were unjust and unreasonable and Laclede’s ACA must be adjusted accordingly pursuant to Section 393.130.1 RSMo 2000. Laclede’s decision to employ FOM pricing occurred in 1996 and did not adjust when market changes suggested that Laclede should protect its customers by moving to daily pricing. (Ex. 1, pp. 9-19). Demand charges for FOM pricing skyrocketed, yet Laclede did nothing to alter its practice to mitigate the impact these high demand charges would have on ratepayers. *Id.* As a result, ratepayers paid over \$2 million more than what should be allowed as prudent. (Ex. 10). Staff’s evidence suggests that Laclede stayed with FOM pricing because doing so maximized Laclede’s profit through off-system sales. (Ex. 1, p. 19). Laclede’s actions go beyond imprudence, and suggest a profit motivated disregard for the struggles that Laclede’s customers experience when paying for the cost of gas necessary to heat their homes.

3. Conclusion

The incentive for Laclede to ensure it incurs no more *gas* costs than necessary is different from the incentive for Laclede to ensure it incurs no more *non-gas* costs than necessary. Once rates are established for non-gas costs in a general rate proceeding, any reduction in non-gas costs becomes additional profits for Laclede and creates a strong incentive for the company to employ practices that reduce non-gas costs. One purpose of the ACA is to provide this missing incentive, which can only act as a true incentive if the Commission applies a strict

standard. Missouri ratepayers deserve nothing less than for the Commission to hold monopoly gas companies to a high standard, which will encourage companies to use the best available data in their planning and to continuously consider and reconsider their pricing structures, mechanisms, and instruments. By employing a strict standard in this case, the Commission will create an incentive for all gas companies to use nothing less than the best data and the best methodologies available. Public Counsel requests that the Commission order the adjustment recommended by the Staff.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 5th day of March 2007.

/s/ Marc Poston