

3. For a number of reasons, Laclede submits that the Commission cannot and should not take the action recommended by Public Counsel. First, as this Commission has repeatedly recognized in the context of other utility tariff filings, the Commission may approve a tariff filing in its entirety, reject it in its entirety, or suspend it pending a full hearing and determination on the merits. (*See Re: Mark Twain Rural Telephone Company's Proposed Tariff to Introduce Its Wireless Termination Service*, 2001 Mo. PSC LEXIS 760, Case No. TT-2001-139 (February 8, 2001); *Re: Davidson Telecom, LLC*, 2003 Mo. PSC 502, Case No. CA-2003-0308 (April 24, 2003); *see also State ex rel. Utility Consumers Council of Missouri v. Public Service Commission*, 585 S.W.2d. 41, 48 (Mo. 1979); §393.150 RSMo. 2000 and 4 CSR 240-2.065 (3) and (4)). What the Commission may not do, however, particularly in the absence of any hearing, is order that certain provisions of the tariff be changed or eliminated while other provisions be implemented. Any suggestion by Public Counsel to the contrary is inconsistent with the legal requirements governing the Commission's consideration of tariff filings.

4. Second, paragraph J is an integral part of the agreement reached between the Company and the schools as well as an essential component of any effort to fairly and effectively implement the various provisions of the Statute. Among other things, paragraph J provides the mechanism by which Laclede is entitled to recover those incremental costs of providing the aggregation service that are not otherwise recovered through other provisions of the tariff. Such a result is, of course, fully consistent with and required by those provisions of the Statute that provide that the program is not to have a detrimental impact on the utility or its other customers. (*See* Section 393.310.5 RSMo Supp 2002, as amended by Senate Bill 686). Indeed, it is for that very reason that

such language appears in Laclede's currently effective tariff for Experimental School Aggregation Service.

5. Paragraph J also establishes the reporting requirements necessary to evaluate the experiment and determine how it has worked. Once again, the Commission has determined that this language, which is also contained in Laclede's currently effective tariff, is reasonable or necessary to administer the experimental program. (*See* 393.310.6). Such language is fully consistent with the Statute's express purpose of conducting an experiment.

6. Finally, paragraph J is the only mechanism through which Laclede is obligated to pass through to its customers (in the form of a credit to the Deferred Purchase Gas Cost Account) the revenues that Laclede will now receive from the ESE's as a result of capacity being released to them under the program. Notably, these are all revenues that Laclede would otherwise be entitled to retain between rate cases.¹ However, by negotiating an arrangement under which the amount of pipeline capacity payments made by the ESEs has been maximized and then agreeing to flow-through such amounts for the benefit of its customers, Laclede has foregone the opportunity to do so. In exchange for foregoing any potential benefit under the Statute, all that Laclede has proposed in return is the inclusion of tariff language clarifying that that the Company will also not be detrimentally affected by implementation of the Statute -- i.e. that it will not be required to absorb the cost of any pipeline capacity previously reserved to satisfy the requirements of the ESEs. Far from being some impermissible form of pre-approval, such a clarification is simply a fair, symmetrical and, in Laclede's view, indispensable

¹ Since capacity release revenues are currently reflected in the Company's base rates, any increase or decrease in those revenues between rate cases would normally be retained or absorbed by Laclede.

component of the advance ground rules that must be established to implement the Statute in a way that is equitable to all concerned and most consistent with its basic purposes.

7. In view of all of these considerations, the Commission should reject Public Counsel's recommendation that paragraph J be deleted and approve the tariff as filed.

RESPONSE TO STAFF

8. In paragraph 13 of its Response, Staff has correctly framed the effect of the recent amendment to the Statute. The amendment determined that the Commission would be presented with one of two possible tariff filings: (1) a filing reflecting that ESEs are not responsible for pipeline capacity charges for longer than is required by the gas corporation's tariff for large industrial or commercial basic transportation customers², or (2) a filing reflecting an agreement between the gas corporation and ESEs that deals with the amount of capacity that ESEs would purchase from the gas corporation. In this case, Laclede has filed a tariff based on an agreement with the schools' association as contemplated by the second alternative.

9. Despite Staff's protestations, this matter breaks down to a very simple decision for the Commission. Faced with the possibility that the schools would assume none of their capacity costs, Laclede negotiated an agreement with the ESEs under which it obtained the schools' commitment to purchase approximately 80% of the pipeline capacity reserved for them. In doing so, Laclede, in accordance with the approach it has consistently taken since the Statute was first passed last year, did the best it could to ensure that the experimental program would not have a detrimental impact on its other customers. To that same end, Laclede also agreed in its tariff filing to credit the schools'

² Laclede's basic transportation customers are not required to purchase any pipeline capacity from Laclede.

payments for such capacity to its other customers. And all that Laclede has sought in return is an entirely reasonable and necessary clarification that Laclede will not be required to absorb the cost of any remaining capacity it had reserved for the schools -- a clarification that should be easy to give in light of the Company's successful efforts to achieve the best result possible for its other customers in a situation that was not of its own making. As stated above the Commission must merely decide as a matter of policy whether it approves or rejects the tariff reflecting this agreement, or whether it must suspend the filing to gather more information before issuing a decision.

10. For the same reasons discussed in Laclede's Response to Public Counsel, however, the Commission may not adopt Staff's suggestion that Laclede be ordered to implement certain portions of its tariff filing while simultaneously ordering it to delete or amend other portions that the Staff finds objectionable. Like Public Counsel, Staff cites absolutely no legal authority which would authorize such an approach. Nor does the Staff provide any tenable policy justification for its recommendation. For example, Staff claims that the Commission should delete the non-absorption language of paragraph J because, in Staff's view, it amounts to some form of impermissible pre-approval. (*See* Staff Response, pp. 8-9) At the same time, however, Staff is apparently more than willing to have the Commission "pre-approve" those aspects of the Company's tariff filing that commit the schools to purchase the vast majority of the capacity that Laclede reserved for them. Staff is also content to have the Commission "pre-approve" those aspects of the tariff filing that require Laclede to flow-through to its other customers the revenues it receives from releasing such capacity to the schools. Indeed, it is only when a provision provides some measure of protection for the Company that pre-approval

suddenly becomes a problem. This kind of selective invocation of pre-approval concerns should be recognized for what it is -- an unfair attempt to skew the ground rules for the program by locking-in all of the benefits that the Company has achieved and offered to provide to its customers while simultaneously rejecting the very measures that were necessary to produce those benefits.

11. In addition to its pre-approval concerns, the Staff also goes to some length in its Response to suggest that there is a multitude of unanswered questions regarding the filing that preclude any definitive recommendation by Staff. For example, in paragraphs 15 and 19-21 of its Response, Staff states that it cannot verify whether the proposed tariffs actually provide for ESEs to purchase 80% of the capacity reserved for them. However, there is no doubt -- in fact, it is a simple matter of mathematics -- that the level of capacity to be taken and paid for by any ESEs that participate in the program will be 80% of the level that Laclede sought at the April 15, 2003 hearing in this case and that both Staff and Public Counsel supported.³

12. In its Response, Staff also expresses concern with the substance or clarity of other aspects of the Company's tariff filing. These include concerns relating to: (a) the fact that Laclede would adjust the ESE bills on a monthly basis (*see* Paragraph 7 of Staff's Response), (b) how billing cycle revenues would be reconciled to calendar revenues; (c) how adjustments for lost and unaccounted for gas would be made (d) how

³ In Paragraph 19 of its Response, Staff expresses concern over the fact that Laclede cannot presently quantify the aggregate amount of pipeline capacity costs currently reserved for the ESEs. Developing such a quantification with any degree of precision, however, necessarily requires that Laclede be advised of which and how many schools will actually be participating in the program -- information that will not be provided to Laclede until the program is approved and the schools make their decisions. Given this consideration, Staff's criticism is misplaced. Moreover, what is known at this time is that, because of Laclede efforts any schools that do participate in the program will continue to pay capacity costs equal to 80% of the level that was previously reserved for them -- a result that is far more reassuring to Laclede's

the accounting under paragraph G of the tariff would work, (e) how certain revenue items would be treated, (f) how reconciliations would be performed under Paragraph F, and (g) whether the historical ACA factor will be applicable to the second year of the program (*see* Paragraph 23 of Staff's Response). Quite frankly, Laclede is surprised that Staff has raised such concerns at this time. In virtually every respect the tariff language that Staff now claims is unclear or potentially troublesome is the same language that Laclede had included in the tariff proposal it submitted prior to the April 15, 2003 hearing in this case. Back then, Staff was apparently comfortable enough with the tariff language submitted by Laclede that it was able to recommend, both during the April 15, 2003 hearing and in its post-hearing brief, that the Commission approve the Company's tariff proposal. (*See* Staff's Statement of Positions filed on April 7, 2003 and Staff's Brief filed on May 5, 2003). In view of these considerations, Laclede is at a complete loss to understand why Staff is raising such concerns now.

13. In any event, Laclede believes that it has reached an agreement with the schools that will implement the school aggregation Statute in a manner that is as favorable as possible to Laclede's remaining customers while also being fair to Laclede. If Staff or Public Counsel believe they can negotiate a better arrangement with the schools or that there are just too many questions and uncertainties regarding the arrangement that Laclede has negotiated, then they can always request that the Company's tariff filing be suspended for further evaluation and proceedings. They cannot, however, pick and choose only those elements of the filing that they find beneficial while discarding what they do not like. Both Laclede and the schools deserve

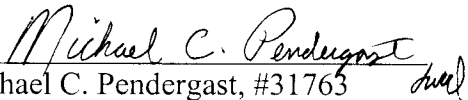
remaining customers than the alternative under which the schools would have not been required to make any contribution to such costs .

to know what the ground rules of this experiment will be before it is conducted rather than after it is completed. Laclede's tariff filing is the only vehicle that accomplishes that purpose.

WHEREFORE, for the foregoing reasons, Laclede Gas Company respectfully requests that the Commission issue an order rejecting Public Counsel's and Staff's recommendations and approving Laclede's revised tariff sheets 1-a, 41-43 and 45.

Respectfully submitted,

LACLEDE GAS COMPANY


Michael C. Pendergast, #31763
Vice President-Associate General Counsel
Telephone: (314) 342-0532
E-mail: mpendergast@lacledegas.com

Rick Zucker, #49211
Assistant General Counsel-Regulatory
Telephone: (314) 342-0533
E-mail: rzucker@lacledegas.com

720 Olive Street, Room 1520
St. Louis, MO 63101
Facsimile: (314) 421-1979

CERTIFICATE OF SERVICE

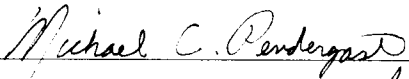
The undersigned certifies that a true and correct copy of the foregoing Reply was served on the following counsel of record in this case on this 1st day of August, 2003, by hand-delivery, electronic mail or by placing a copy of such Reply, postage prepaid, in the United States mail.

Douglas E. Micheel
Senior Public Counsel
P.O. Box 7800, Suite 650
Jefferson City, MO 65102

Dana K. Joyce
General Counsel
Robert V. Franson
Associate General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Richard S. Brownlee III
221 Bolivar Street, Suite 300
P.O. Box 1069
Jefferson City, MO 65102

Robert E. McWilliams
Lashly & Baer, P.C.
714 Locust Street
St. Louis, MO 63101



Awd