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October 8, 2002

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

FILED[3]
OCT 0 8 2002
Missouri Public
Service Commission

Re: GT-2003-0117

Dear Mr. Roberts:

Enclosed for filing on behalf of Laclede Gas Company, please find an original and eight (8) copies of a Response in Opposition to Staff's Motion to Suspend Tariff or in the Alternative to Reject Tariff and Public Counsel's Motion to Suspend.

A copy of this filing is being provided to Office of the Public Counsel and Staff General Counsel.

Please see that this filing is brought to the attention of the appropriate Commission personnel.

I thank you in advance for your cooperation in this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By: Dean L. Cooper by MLD

Dean L. Cooper

DLC/lar
Enclosure
cc: John Coffman
Lera Shemwell

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of the Tariff Filing of	)	
Laclede Gas Company to Implement	)	
An Experimental Low Income Assistance	)	Case No.GT-2003-0117
Program called Catch-Up/Keep-Up	)	

LACLEDE GAS COMPANY'S RESPONSE IN OPPOSITION TO STAFF'S MOTION TO SUSPEND TARIFF OR IN THE ALTERNATIVE TO REJECT TARIFF AND PUBLIC COUNSEL'S MOTION TO SUSPEND

COMES NOW Laclede Gas Company ("Laclede" or "Company"), pursuant to 4 CSR 240-2.065 and 4 CSR 240-2.080(15) Rules of Practice and Procedure of the Missouri Public Service Commission ("Commission"), and for its Response in Opposition to the Motion to Suspend Tariff or in the Alternative to Reject Tariff filed by the Commission Staff ("Staff") on October 1, 2002, and the Motion to Suspend filed by Public Counsel ("Public Counsel") on or about that same date, respectfully states as follows to the Commission:

1. On September 23, 2002, Laclede filed a tariff (the "New Tariff") proposing a revised version of the "Catch-Up/Keep-Up" program (the "Program") that the Company had initially filed with the Commission on July 29, 2002 (the "Original Program"), in an effort to implement an energy assistance program for its low-income customers. At the same time, the Company also filed a Verified Motion requesting that the Commission approve the New Tariff on an expedited basis for service rendered on and after October 15, 2002.

2. In its Verified Motion, which was supported by the attached affidavits of John Moten, Jr. and Michael T. Cline, the Company stated that approval of the New Tariff on an expedited basis was necessary and appropriate because:

- the Company still had a significant amount of advance preparation work, ranging from modifications to its information system to the coordination of outreach and processing efforts with participating social service agencies, that remained to be accomplished in order to implement the Program this winter;

- the Company had a need in the very near future to advise literally thousands of customers who will be seeking to have their service restored (and who have combined arrearages of more than $9 million) of whether a Program specifically designed and essential to helping them restore that service on affordable terms would or would not be available; and

- the Company had made numerous changes to the Program in an effort to address the specific concerns that had been raised by the Staff in its prior Motion to Suspend the Company's Original tariff filing, including a complete elimination of Laclede's right under the Original Program to retain 10% of the discount savings for its own use.

3. In explaining why approval of the New Tariff was appropriate, the Company also demonstrated in its Verified Motion that there were multiple Commission precedents for ***every single feature*** of the Program. Specifically, Laclede showed that the funding aspects of the Program were solidly rooted in previous pipeline discount programs that had been approved by the Commission over the years for gas utilities, both as part of general rate case proceedings and outside of general rate case proceedings. *See* Verified Motion, p.10 and attached Affidavit of Michael T. Cline. Laclede also showed that the low-income grant aspects of the Program were indistinguishable from weatherization and other programs that had previously been approved by the Commission – programs that, like the Catch-Up/Keep-Up Program, provided monetary grants to individual customers based on their eligibility for assistance under low-income guidelines. *Id.*

RESPONSE TO STAFF

4. In its Motion to Suspend the New Tariff filing, the Staff does not dispute in any way the extensive information provided by Laclede regarding the need for the Program.[1] In fact, the Staff states that "a properly designed program to help customers with arrearages that also encourages regular bill payment and conservation might have benefits for Laclede's 'most vulnerable' customers and, in fact, might provide some benefits for all of its customers." Staff's Motion, p. 1. The Staff also does not challenge the fact that Laclede has made numerous changes to the Program in its New Tariff filing to address the concerns that were previously raised by the Staff. To the contrary, the Staff simply ignores those changes and proceeds to raise an entirely new set of concerns that, according to Staff, warrant suspension of the Program.

5. Needless to say, the Company is extremely disappointed and, frankly, at a loss to understand why the Staff has been unable to see its way clear to support a Program that, in combining the elements of other programs previously approved by the Commission, as well as Staff's own suggestions, seeks to provide low-income customers with a lawful and effective alternative to what has become an intractable affordability problem for many of those customers. Contrary to Staff's assertion at page 10 of its Motion, this Program is not and never has been about "headlines." Rather, it is about taking action and actually *doing* something meaningful to address a very real problem. Specifically, it is about giving low-income customers a meaningful chance to restore or maintain their service and, in the process, work off their arrearages in exchange for their commitment to stay current on their payments and take the kind of

[1] In fact, the Staff suggests that it "fully supports customer assistance programs that are ... fully defined in terms of the customers in need, the actual cost of the program and the term of the program ..." Staff Motion, p. 2. Through the Company's Verified Motion and the Affidavit of John Moten, Jr., the Company has fully defined both the need for the Catch-Up/Keep-Up Program and its relationship to the cost of the Program. Moreover, they have done so in a manner that draws a much closer nexus between program needs and funding than that established for other low-income programs in which the level of funding seems to have been arbitrarily established without regard to actual need.

conservation actions that will benefit all customers in the long-run. Will the Program work in such a manner? Clearly, the Company believes so, but that cannot be known with absolute certainty until there is implementation and the results become available. What can be known with certainty, however, is that nothing will happen, no progress will be made, no problems will be solved, and no customers will be helped if implementation of a Program that benefits everyone and harms no one continues to be delayed by an ever evolving series of "concerns" that get raised as soon as the old ones are remedied.

6. And those are the very kind of arguments that Staff has made with its latest Motion to Suspend. Although Laclede believes that many of these arguments are so obviously flawed and contradictory that no extended discussion is necessary, the Company will nevertheless provide a brief response to the major legal and policy objections that Staff has now raised in its latest Motion.[2]

Legal Objections

7. At page 3 of its Motion, the Staff asserts that the "Company's approach in its filings related to this program has been that the outcome of the program justifies the (funding) means, without due regard for the lawfulness of the means." With all due respect, Laclede would suggest that the Staff's approach to its filings relating to the Catch-Up/Keep-Up Program has been one of erecting one invalid legal objection after another – objections that have never stood in the way of the Staff endorsing other programs that are legally indistinguishable – without due regard for the outcome of its arguments on the availability of a program that is desperately needed by the Company's most vulnerable customers. For example, Staff contends

[2]Since Public Counsel has referenced the same concerns as Staff -- albeit in a far less critical way -- there is no need for the Company to separately address its Motion to Suspend. Laclede would note, however, Public Counsel's favorable statements regarding the potential benefits of a Program like the one proposed by the Company in this case and the similarity of some of its major features to proposals made by Public Counsel in the past.

that the method proposed by Laclede to fund the Program would be legal if the Program had been filed as a gas supply incentive mechanism. Staff Motion, p. 5, paragraph 21. Staff contends, however, that the latest version of the Program was not filed as an incentive mechanism, and therefore the use of pipeline discount savings to fund the Program should be construed as a general rate increase that, under the terms of the moratorium on a general rate increase agreed upon by the parties in Case No. GR-2002-356, cannot be implemented at this time. Staff Motion, pp. 4-6. Staff also asserts that these considerations make the Company's use of the pipeline discounts equivalent to a forced charitable contribution or an unlawful subsidy or rebate. Staff Motion, pp. 6-7.[3]

8. Staff's assertions in this regard are particularly disturbing. After all, it was in direct response to Staff's previously stated concerns regarding the potential impact of certain incentive features of the Original Program that Laclede voluntarily eliminated that aspect of the Program that would have permitted the Company to retain 10% of the pipeline discount savings achieved by the Company for its own use. However, rather than welcome the Company's efforts to resolve what it had been led to believe was the major obstacle to the Program's acceptance by other parties, the Staff seeks to use it as a pretext for raising yet another claim of illegality. Indeed, Staff even goes so far in its Motion to suggest that the Commission should instruct Laclede to refile its proposal as an incentive plan if it chooses to pursue funding through that method. Staff Motion, p. 11. This kind of transparent shell game, in which a party first opposes

[3] As discussed later in this Response, these latter arguments are, by Staff's own admission, irrelevant since the Program's funding method is fully consistent with the Commission's approval of other pipeline discount incentive mechanisms. Even if they were not, however, it is impossible for Staff to argue that the grant features of the experimental Program proposed in this case are illegal, when it has endorsed other low-income weatherization and assistance programs, some of which are even mentioned in Staff's Motion, in which grants or reduced rates have been authorized for certain customers based solely on their income levels. If this Program is unlawful, so are they.

a program because it contains supposedly objectionable incentive features only to turn around a few weeks later to argue that such incentive features are instead indispensable to the program's legality, should be rejected by the Commission.

9. Such arguments should also be rejected because they are based on a faulty premise, namely, that by removing the Company's right to retain 10% of the pipeline discount savings for its own use or by not including the exact kind of incentive features that the Staff might prefer, the Program can no longer be deemed an incentive program. The premise is faulty because, as both the Staff and the Company have previously pointed out, a portion of any discount savings achieved by the Company would be used to help customers who might otherwise be unable to pay their utility bills. To the extent this happens, both the Company and its remaining customers will be benefited over the long-term through a reduction in the bad debts that would otherwise be experienced by the Company and eventually paid for by its customers.[4] Accordingly, while any financial benefit to the Company as a result of its pipeline negotiation efforts may be more uncertain and less direct than those that have been afforded by other incentive programs, there is still a link between the Company's performance and its financial interests. In view of this link, there is no basis for saying that the New Program is not an incentive program.

10. At the same time, it bears repeating that in comparison to most other incentive programs, customers under the Catch-Up/Keep-Up Program will ultimately receive a far greater proportion of the savings achieved by the Company. In fact, Laclede's customers will receive the benefit of every last dime of the discount savings achieved by the Company since all of those

[4] An unfortunate theme that seems to permeate Staff's arguments is the notion that any program that benefits the Company's customers must be viewed skeptically and pass a special standard of review, if it also has the potential, no matter how indirectly, to also benefit the utility. This antipathy against programs that can provide a "win/win" outcome to all stake-holders is both counterproductive and inexplicable.

savings will either be used to fund the Program or flowed through to all remaining customers. In short, the Program has the requisite attributes of incentive programs that have been approved in the past and, as such, the funding mechanism proposed by the Company for the Program is perfectly lawful even under Staff's view of the world. The only difference is that this incentive Program targets savings to customers only, while providing carefully-structured additional help to those who need it most --- considerations that, under any reasonable interpretation of the laws governing the Commission and the purposes underlying them, can only bring it more squarely within the ambit of what is legally permissible.

11. Since the Staff has acknowledged that an incentive program provides a lawful basis for funding the Program -- and this Program qualifies as such -- its other arguments that the Company's proposal is some kind of general rate increase that is prohibited by the rate moratorium agreed upon by the parties in Case No. GR-2002-356 or that it constitutes an unlawful rebate, subsidy or forced charitable contribution are irrelevant.[5] Moreover, the Staff's characterization of the proposal as a rate increase, general or otherwise, is simply wrong. First, the Program does not and will not change the Company's filed and approved base rates. Second, unlike the revenues from a rate increase, *none* of the discount savings achieved by the Company will be retained for its own use. Third, Staff's characterization is nothing more than a different way of expressing its position that incentive mechanisms for pipeline discounts are only

[5]It should be pointed out that there is nothing in the three Stipulations and Agreements approved by the Commission in Case No. GR-2002-356, or in the three Staff memoranda that were filed in support of them, or in the transcript of the on-the-record presentation of the Stipulations and Agreements that would suggest that anything agreed upon in that case was to have any effect on the Company's pursuit of the Catch-Up/Keep-Up Program. To the extent that a settlement is intended to preclude the pursuit of a matter in another proceeding, the practice is to include a provision in the settlement explicitly requiring that such proceeding be terminated. In fact, the parties did just that in one of the rate case stipulations and agreements in Case No. GR-2002-356 by including a provision in the agreement requiring the Company to end its pursuit of an accounting authority order in Case No. GA-2002-429 for its weather-related losses. *See* Paragraph 16 of the August 20, 2002, Partial Stipulation and Agreement in Case No. GR-2002-356. The complete absence of any comparable provision relating to the Company's Catch-Up/Keep-Up Program request, or even any mention of it in the proceedings before the Commission (other than an unrebutted statement by

acceptable when they require the utility to achieve an ever greater level of discounts in order to qualify for any financial benefit. In contrast, Laclede has consistently argued that in a competitive marketplace it is impossible to endlessly ratchet up the level of savings achieved in a particular area -- that in many instances just maintaining an historical level of discounts is a significant achievement. Under either view, however, it is neither fair nor accurate to equate a retention of savings as a rate increase. In any event, Laclede had hoped that by designing a Program under which 100% of the savings would be passed through to the Company's customers, it had afforded both the Commission and the Staff with a way to break this impasse and move beyond the old stale arguments to something more constructive. Just because the Staff has chosen not to walk through that opening, there is no legal or, as discussed below, policy reason why the Commission should not. Simply put, the Company's proposal represents a program that is lawful, solidly rooted in previous initiatives approved by the Commission, and designed to benefit everyone. It should accordingly be approved.

Policy Objections

12. In its Motion, the Staff also expresses several policy concerns regarding the design of the Program. Those concerns are also without merit. For example, the Staff expresses the concern that the Program may, in fact, provide customers with a "disincentive" to reduce their arrearages since it allows them to have their service restored without paying a portion of their arrearages. Staff Motion, p. 9. Once again, such criticisms by the Staff are difficult to understand given the history of the Program's development. One of the major modifications that the Company made to the Original Program in response to concerns that had been raised by Staff was to relax the strict requirement that customers make three timely payments in order to qualify

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Laclede's counsel during the on-the-record presentation that the Company was pursuing such a Program in another case) shows that there is no basis for Staff's contention.

for a grant by providing an exception for customers who were unable to do so because of "extenuating circumstances." Having made this modification, however, the Company is now confronted by Staff claims that the payment terms imposed on customers under the Program are not harsh enough! All of which leads to the conclusion that no matter what the Company does, it will either be "too this" or "too that", but never "just right." Staff's argument should be rejected for what it is -- a baseless attempt to discredit the Program by any means possible.

13. Staff also expresses the concern that by providing grants to customers, the Program might result in the Company losing some portion of the federal or state energy assistance funds that it would otherwise receive for such customers. Staff Motion, p. 9. Staff's assertions conveniently overlook the fact that from the very outset, the Program proposed by the Company has included provisions requiring that all reasonable steps, including contractual steps, be taken to make sure participating agencies do not cut back on the funds that would otherwise be made available to Laclede. *See* Section H.3.a of the New Tariff. The Staff has also overlooked new statutory language in the State UtiliCare Law that was enacted in the last legislative session as part of Senate Bill No. 810. That language specifically requires that social service agencies continue to distribute energy assistance funds, including both state and federal funds, in a manner that maintains as closely as possible the share of funds historically received by utilities like Laclede. Specifically, §660.115 was modified to provide that "the respective shares of overall [low-income energy assistance] funding previously received by primary and secondary heating and cooling suppliers on behalf of their customers shall be substantially maintained." In short, Staff's concerns have already been fully addressed both by the Company in its tariff and by the Missouri General Assembly in the UtiliCare Statute.

14. Finally, Staff suggests that other low-income assistance programs, such as the one adopted for Missouri Gas Energy in its last rate case, may be better designed because it was developed by a recognized expert in the field. Staff Motion, p. 8. However, while the Company's program is larger and would serve more customers, the Staff has pointed to no material differences in the programs that would suggest one is better designed than the other. In fact, they both provide assistance to low-income customers, through either monthly or quarterly credits to the customer, in exchange for the customer complying with the programs' requirements. Accordingly, the Commission should have no reservations about approving this Program.

Conclusion

15. As the Company indicated in its previous Motion, it has made every effort to take a good Program and make it better, to listen and respond constructively to the input of other parties, and to make the kind of concessions that should give the Commission reasonable assurances that the Program is in the public interest and very much worth pursuing. The Program truly does combine, in an innovative way, the features of programs that have previously been approved by the Commission in order to provide needed assistance to the Company's most vulnerable customers and provide long-term benefits to the Company's other customers. There is nothing in the Motions filed by Staff and Public Counsel that would show that the Program should not be given an opportunity to do just that. In view of these considerations, Laclede continues to believe there is good cause for approving the New Tariff on less than thirty days' notice and for granting the Company's request for such expedited treatment so that the Company can begin to implement it in its service area in advance of the heart of the winter heating season.

WHEREFORE, for the foregoing reasons, Laclede Gas Company respectfully requests that the Commission issue its Order approving the New Tariff, granting the Company's Motion as requested herein and deny the Motions to Suspend submitted by Staff and Public Counsel.

Respectfully Submitted,

Michael C. Pendergast by MBA

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Response was served on the General Counsel of the Staff of the Missouri Public Service Commission on this 8th day of October, 2002 by hand-delivery or by placing a copy of such Response, postage prepaid, in the United States mail.

Michael C. Pendergast by MBA