Exhibit No.:	
Issue:	Tariff Revision Designed to Clarify Liability for Damages Occurring on Customer Piping and Equipment
Witness:	David P. Abernathy
Type of Exhibit:	Direct Testimony
Sponsoring Party:	Laclede Gas Company
Case No.:	GT-2009-0056
Date Testimony Prepared:	July 17, 2009

LACLEDE GAS COMPANY

GT-2009-0056

DIRECT TESTIMONY

OF

DAVID P. ABERNATHY

JULY 2009

DIRECT TESTIMONY OF DAVID P. ABERNATHY

Q. Please state your name and business address.

A. My name is David P. Abernathy. My business address is 720 Olive St., St. Louis, Missouri 63101.

Q. By whom are you employed and in what capacity?

A. I am employed by Laclede Gas Company ("Laclede" or "Company") as Vice President & Associate General Counsel, Industrial Relations and Claims Management.

Q. Please describe your work and educational experience.

A. I joined Laclede in 2004 as Vice President and Associate General Counsel and was appointed to my current position on October 1, 2007. Throughout my tenure at Laclede, I have, among other duties, supervised Laclede's Claims Department as well as the Company's litigation activities involving third-party claims. Prior to joining Laclede, I served for over sixteen (16) years in a number of legal positions with Missouri-American Water Company, including most recently Vice President and General Counsel. While at Missouri-American, I also gained significant experience with a wide variety of legal matters, including experience with personal injury and property damage claims and the litigation that occasionally arose from those claims. I received a Juris Doctorate degree from the University of Missouri in 1986 and a Bachelors of Arts degree in Communications from Western Illinois University in 1983.

Q. What is the purpose of your testimony in this case?

A. The purpose of my testimony is to explain and support the modified version of the tariff sheets that Laclede filed on August 22, 2008 to establish reasonable parameters for when the Company and ultimately its customers should be potentially subject to liability in

civil court and the consequent financial responsibility for incidents that occur on a customer's premises "downstream" of the Company's meter. For the Commission's convenience, I have attached a copy of the modified version of these tariff sheets as Schedule 1 to my Direct Testimony.

Q. Why does the Company believe there is a need to establish such parameters?

A. As the person responsible for supervising resolution of the third-party claims made against the Company, including the litigation that occasionally arises from such claims, I have first hand knowledge of the unnecessary costs and expenses that the Company incurs and that its customers ultimately pay as a result of having to defend and sometimes pay for frivolous legal actions that should never have been filed or, allowed to be pursued through the civil court system. Many of these cases involve personal injury and property claims for incidents that have occurred inside the customer's premises and "downstream" of Laclede's meter. Laclede acknowledges that some of these third-party claims may contain fact patterns that could be considered meritorious and therefore deserve to be presented for consideration by the trier of facts. However, all too often, these claims involve attempts by attorneys and their clients to hold the Company and its customers financially liable for incidents on the customer's premises that Laclede had no role in creating and no duty, or even the ability to prevent. Indeed, in many instances the only connection that Laclede has to an incident is that it may have provided natural gas to the premises where the incident occurred or, at some distant point in the past, performed a mandated inspection of the customer-owned equipment located at the premises. Despite having played no role in a particular incident, however, the Company frequently finds

itself having to defend itself in litigation simply because it is a viable and accessible organization, and, in some cases, the only financially solvent Defendant.

Q. Can you provide examples of the kinds of unwarranted claims that the Company has had to defend?

A. There are numerous examples of legal claims that should never have been brought against Laclede but that we have nevertheless had to expend significant resources to defend. For example, Laclede has been sued for an explosion that occurred when a third party attempted to steal gas from the Company in an apartment complex by removing several locks from our meters and, in turn, mistakenly turned on gas to the wrong apartment. We have been sued for having allegedly failed to notice a squirrel's nest in a flue despite the fact that the incident which resulted from this alleged failure occurred many months after the Company had made a mandated inspection of the customer-owned equipment located on the premises. The Company was also sued in a carbon monoxide poison case for allegedly failing to properly inspect a customer-owned furnace, even though the incident occurred approximately one year and four months after the mandated turn-on inspection, an intervening third party had serviced the furnace several times prior to the incident, and the plaintiff had no evidence the furnace was even the source of the carbon monoxide. And even today we face the prospect of potential litigation in a situation where an explosion occurred after someone, without any attempt to contact the Company, illegally turned on gas at a locked meter, allowed the gas to escape from an open stove valve, and before the gas could dissipate, lit a cigarette despite a warning from a cohort that there was still too much gas in the house. By effectively seeking to make the Company and ultimately its customers "insurers of last resort" for anything bad that

happens downstream of the Company's meter, these and other frivolous actions expose our ratepayers to significant and unnecessary costs as well as potential financial exposure for matters that are not the Company's responsibility. It is these kinds of inappropriate claims and costs that the language set forth in Schedule 1 is designed to mitigate.

Q. Please explain how the Company developed the tariff language set forth in Schedule 1.

A. The Company originally filed tariff sheets to address this subject in its last rate case proceeding. When a consensus could not be reached on the language proposed by the Company, the parties agreed that Laclede would be free to file its proposal once the rate case was concluded. After a number of discussions with the Staff of the Missouri Public Service Commission ("Staff") and the Office of the Public Counsel ("OPC"), the Company filed a modified version of what it had proposed in the rate case on August 22, 2008. After that filing was made, Laclede continued to discuss the substance of its proposal with Staff and OPC. The end result of those discussions is set forth in Schedule 1.

Q. Did the parties reach agreement on the language set forth in Schedule 1?

A. Based on our discussions, I believe that the Company and Staff have come very close to reaching a consensus on the language in Schedule 1, subject only to Staff's request for additional support on one feature of the proposed tariff. It appears, however, that OPC continues to oppose any meaningful change in this area. In fact, OPC seems to believe that judges and jurors with no technical experience in this area are nevertheless better qualified to determine these matters than the Commission and those Staff experts who have routinely dealt with these issues for decades when determining what safety standards utility operators should meet when providing service to their customers. OPC

also seems to believe that the gas customers it represents should be exposed to litigation costs and potential judgments for events that have nothing to do with the Company's facilities or actions. Obviously, the Company disagrees with such a notion.

Q. What specific parameters would the tariff language in Schedule 1 establish?

A. First, it should be noted that most, if not all, of the concepts addressed in the newly proposed language are already codified in some form or another in Laclede's existing tariff language. However, it has become apparent in recent years that the court systems are more likely to enforce specific, rather than general tariff language. Consequently, compared to existing tariff language, the tariff proposal set forth in Schedule 1 would establish a brighter line of responsibility based on who owns the facilities or equipment in question. With respect to Company-owned facilities, the tariff language makes it clear that the Company would continue to have responsibility to transport and deliver natural gas to the customer's meter in a manner that complies with all applicable safety, pressure and quality standards established by the Commission. Assuming the Company complies with all of these standards; such compliance would provide a defense against third-party claims relating to this aspect of the Company's operations. Similarly, the Company would continue to have a duty to provide safety warnings and notices to customers in accordance with the requirements of the Commission's safety rules. Again, in the absence of actual, specific knowledge of a dangerous condition gained by the Company through contact with a customer, such compliance would constitute a defense against claims relating to any duty the Company has to provide such warnings.

Q. What does the tariff language provide in terms of customer-owned facilities?

A When it comes to customer-owned appliances and piping, the tariff language appropriately recognizes that it is the customer who bears responsibility for ensuring that such facilities are maintained in a safe manner, consistent with all applicable rules. As a consequence, the tariff generally provides that the Company shall not be held liable for injuries or damages that arise as a result of any defect or malfunction that may arise in connection with such customer-owned equipment or that may be caused by the actions of the customer or third-parties. At the same time, the tariff also recognizes that the Company is required by the Commission's rules to inspect and sometimes test such facilities when it initiates or turns on service and that the Company may also undertake to perform certain work in connection with such facilities at the customer's request. Under those circumstances, the tariff presumes that the Company performed these activities in a safe and appropriate manner, provided that the customer's equipment operates as designed and in a safe manner for 48 hours after gas service was initiated.

Q. Does this mean that no third-party claims can be made against Laclede after the expiration of the 48-hour period?

A. No. While there is a presumption that such activities were performed in a safe manner once 48 hours have passed, the tariff goes on to provide that the Company shall not be relieved of liability until an additional, reasonable period of time has expired without incident. Specifically, for situations where the customer uses natural gas as a source for space heating, 60 winter days must expire since the customer's premises was last visited by a Company employee before the Company will be relieved of liability. For situations where gas is used for non-space heating purposes, the period is 90 calendar days.

Q. Why did the Company select these particular periods of time?

A. It is possible that once gas service is initiated, the customer may not immediately use their gas fueled appliances or equipment. In circumstances where service was initiated or work done during the summer, for example, the customer may not turn on the furnace or boiler that heats the customer's home, thereby frustrating the objective of determining whether the appliance was working in a safe manner. It is also possible that a customer may go on an extended vacation during which appliances in the home would be shut off. During any 60-day period during the winter months of November through March, however, it is almost certain that a customer will have used their heating equipment at some point during that period, thereby affording the opportunity to determine that equipment was working appropriately; hence, the 60-day period for situations where gas is used for space heating. Similarly, where natural gas is consumed by those non-space heating applications that tend to operate throughout the year (i.e. stoves, water heaters, etc), a 90-calendar day period should likewise provide sufficient time to ensure that such customer-owned equipment has had a chance to demonstrate that it is functioning in a safe manner.

A. Is there other evidence which supports the reasonableness of these time periods?

Q. Yes. There are a wide variety of unregulated firms that inspect, test and do work on customer-owned gas appliances and piping. Based on my review of the service contracts used by these firms, it is clear that they all place explicit limits on how long they will be liable for any defect or malfunction that may arise in connection with the equipment they inspect or otherwise work on. In most instances, these warranties or guarantees extend for only 30 days after the work is performed, although a few go as long as 60 or 90 days. In other words, the competitive marketplace recognizes that once work is performed on a

piece of equipment, there should be only a limited amount of time during which the servicer of the equipment should be expected to guarantee continued operation of the equipment. Similarly, there should be limits on how long a utility like Laclede should be held financially responsible for claims arising from defects or malfunctions of customer-owned equipment that it may inspect or work. Clearly the limits that Laclede has proposed in this regard fall well within the competitive norm.

A. Are there additional reasons why establishing such liability limits for gas utilities like Laclede is appropriate?

Q. Yes. In contrast to unregulated firms who perform similar services on customer-owned appliances and equipment, much of the inspection and testing work done by the Company on such facilities is mandated by the Commission and provided without any direct charge to the customer. In fact, the Missouri Commission has adopted one of the most aggressive programs in the country to ensure that gas service is provided in a safe manner.

Q. Please explain what you mean.

A. Commission Rule 40.030 (4 CSR 240-40.030) prescribes the safety standards that must be followed by operators who transport natural gas in Missouri (the "Missouri Safety Rule"). The Missouri Safety Rule standards apply to each Missouri municipal and investor-owned gas utility, including Laclede. The Missouri Safety Rule was originally adopted in 1968, and has since been amended 23 times. The Rule is 37 full pages of single-spaced, triple column print, and covers, among other things, metering, corrosion control, operation, maintenance, leak detection, and repair and replacement of gas pipelines. The Missouri Safety Rule is similar to the Minimum Federal Safety Standards

contained in 49 CFR Part 192 (the "Federal Safety Rule"). However, the Missouri Safety Rule is, in certain circumstances, stricter than the Federal Safety Rule. With respect to inspections, the Federal Safety Rule requires an operator to inspect only its own facilities when physically turning on the flow of gas. Under Section 10(J) and 12(S) of the Missouri Safety Rule, however, Laclede is required to perform specific gas safe inspections of both its own facilities (which generally ends at outlet of the meter) *and* the customer's gas piping and connected equipment, at the time a Laclede representative physically **turns on** the flow of gas to new or existing customers.

Q. Do you disagree with these additional mandates in Missouri?

A. I certainly understand the safety objective underlying these mandates. The important point to remember here, however, is that gas utilities in many other states incur no liability whatsoever for events that occur behind their meters because, unlike utilities in Missouri, they have no obligation to perform any inspections of customer-owned equipment and piping at the time service is initiated. Accordingly, while it may have been entirely appropriate for the Missouri Commission to provide utility customers in Missouri with an enhanced level of public safety by mandating such inspections, there is no reason why it should allow that safety initiative to be misused as a pretext for exposing Missouri utilities and their customers to additional and unnecessary litigation costs. Indeed, when viewed in that context, the only thing that the Company is trying to do with its proposal is to limit partially, in a very reasonable and measured way, the kind of liability to which other gas utilities are not exposed by virtue of not performing this mandated work. In my view, that is an entirely reasonable and appropriate action for the Commission to take.

Q. But shouldn't the judges and jurors, rather than the Commission, sort these matters out through the civil litigation process?

A. Except for those circumstances where the Company has demonstrated that it has acted in an appropriate manner by complying fully with Commission safety requirements and the other conditions set forth in the proposed tariff language, customers will continue to have the opportunity to pursue their claims in civil court regarding alleged acts of negligence on the part of the Company. That said, it would be very poor public policy for the Commission to presume that judges and jurors, who have no particular technical expertise in how natural gas systems and facilities operate, should nevertheless set the standards for when a utility has or has not met its obligations to provide natural gas service in a safe manner. Such an ad hoc approach to setting safety standards – through the imposition of civil liability for particular acts and omissions rather than the approval and enforcement of informed regulation – is neither contemplated by Missouri law nor consistent with sound public policy. To the contrary, the Missouri legislature has long recognized that the power to determine how utilities should go about the task of rendering utility service in a safe and reliable way resides with the Commission, rather than the courts. For it is the Commission, rather than the courts, that has the resources and obligation to assess the financial costs associated with providing various levels and types of service and determine whether a particular measure makes enough of a contribution to public safety to justify its costs and recovery from ratepayers. It is also the Commission, and not the courts, that have an experienced safety Staff, which has decades of experience in assessing the operational, engineering, and financial implications of various safety measures. Given these attributes, the Commission not only has the right but also an

affirmative duty to establish the standards that utilities should follow to ensure that gas service is provided in an efficient and safe manner. Indeed, the Commission itself has recognized as much by opposing prior efforts by attorneys and others to use the courts to alter the terms of safety programs and other measures that have been approved by the Commission to protect public safety in a rational and prudent manner. The very same considerations warrant approval of the Company's proposal in this case.

Q. But won't such limitations on the Company's liability reduce its incentive to take all reasonable actions necessary to provide service on a safe basis?

A. Not at all. Under the Company's proposal, Laclede would still have to comply with all applicable safety regulations. If it does not, it would continue to face not only civil liability under the tariff language the Company has proposed, but also the possibility of civil penalties that could be pursued by the Commission. Given the fact that the potential amount of these Commission-initiated penalties were significantly increased just a few years ago by the legislature, and that they do not even apply to unregulated firms that perform the same kind of work, there is really no basis for such a concern.

Q. Does this complete your Direct Testimony?

A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Laclede Gas Company's Tariff Revision Designed to Clarify Its Liability for Damages Occurring on Customer Piping and Equipment.	))))	**Case No. GT-2009-0056** Tariff No. JG-2009-0145

AFFIDAVIT

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

David P. Abernathy, of lawful age, being first duly sworn, deposes and states:

1. My name is David P. Abernathy. My business address is 720 Olive Street, St. Louis, Missouri 63101; and I am Vice President & Associate General Counsel, Industrial Relations and Claims Management of Laclede Gas Company.

2. Attached hereto and made a part hereof for all purposes is my direct testimony, on behalf of Laclede Gas Company.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

David P. Abernathy

Subscribed and sworn to before me this 6TH day of July, 2009.

LINDSAY HENDERSON
Notary Public — Notary Seal
STATE OF MISSOURI
City of St. Louis
My Commission Expires: Jan. 31, 2010
Commission # 06826600

Notary Public

Schedule 1

Revised Tariff Proposal Language

Customer Equipment shall mean all appliances, piping, vents, connectors, valves, fittings or any other gas utilization or distribution equipment at or on the Customer's side of the Point of Delivery.

Point of Delivery shall be that point where the Company delivers metered gas (outlet of Company gas meter) to the Customer's installation unless otherwise specified in the service agreement. The gas supplied by Company becomes the property of Customer at the Point of Delivery.

Winter days shall be those days occurring during the months of November through April.

The Company shall be responsible for the safe transmission and distribution of gas, free of constituents (water or debris) that materially interfere with or adversely affect the safe and proper operation of Customer Equipment, until such gas passes the Point of Delivery to the Customer in a manner that complies with the pressure, quality and other requirements set forth in the Safety Standards of the Pipeline Safety Regulations of the State of Missouri, 4 CSR 240-40.030, and the Pipeline Safety Regulations issued by the U.S. Department of Transportation, 49 CFR Part 192. Such compliance shall constitute the safe transmission and distribution of gas by the Company and shall constitute full compliance with the Company's duties and obligations in the transmission and distribution of gas. Compliance with the above shall constitute a complete defense for the Company in any lawsuit against the Company by the Customer or any other person or entity for loss, damage or injury to persons or property, or death, arising in whole or in part from the transmission and distribution of gas by the Company.

The Company does not own Customer Equipment, nor is it responsible for the design, installation, inspection, operation, repair, condition or maintenance of Customer Equipment, except for the testing and inspection requirements of 4 CSR 240-40.030(10)(J) and (12)(S), or unless the Company expressly agrees in writing to assume such obligations. The 10(J) and 12(S) requirements are intended only to ensure the safe introduction of gas into Customer Equipment. As with any equipment, Customer Equipment can be defective, fail, malfunction or fall into disrepair at any time, and Customer shall be deemed to be aware of this fact. It shall be presumed that such testing and inspections were performed in a safe and appropriate manner if such Customer Equipment operates as designed for 48 hours after gas service is initiated.

The Customer shall ensure that all Customer Equipment is suitable for the use of natural gas and shall be designed, installed, inspected, repaired and maintained by the Customer and at the Customer's expense in a manner approved by the public authorities having jurisdiction over the same, and in good and safe condition in accordance with all applicable codes. The owner/customer shall be responsible at all times for the safekeeping of all Company property installed on the premises being served, and to that end shall give no one, except the Company's authorized employees, contractors or

agents, access to such property. The owner/customer of the premises being served shall be liable for and shall indemnify, hold harmless and defend the Company for the cost of repairs for damage done to Company's property due to negligence or misuse of it by the owner/customer or persons on the premises affected thereby.

Subject to the Company's responsibility for the safe transmission and distribution of gas as provided above, and except as otherwise provided for herein, upon expiration of the Non-Incident Operational Period, as defined below, Company shall in no event be liable to Customer or anyone else, and Customer shall indemnify, hold harmless and defend the Company from and against any and all liability, claims, proceedings, suits, cost or expense, for any loss, damage or injury to persons or property, or death, in any manner directly or indirectly connected with or arising out of, in whole or in part (i) the release or leakage of gas on the Customer's side of the Point of Delivery; (ii) a leak and ignition of gas from Customer Equipment; (iii) any failure of, or defective, improper or unsafe condition of, any Customer Equipment; or (iv) a release of carbon monoxide from Customer Equipment.

The Non-Incident Operational Period shall begin on the date that Company representatives were last inside the customer's place of business or premises to perform testing, inspection or other work for which the costs and revenues are normally considered in the ratemaking process. For instances where the Customer Equipment at issue is a natural gas fueled appliance used for space heating, such as a furnace or boiler, the Non-Incident Operational Period shall end once 60 winter days has elapsed following the premises visit or the date on which any party other than Company subsequently tests, inspects, adjusts, repairs, or replaces such Customer Equipment, whichever occurs earlier. For instances where the Customer Equipment at issue is a natural gas fueled appliance not used for space heating, such as a water heater or stove, the Non-Incident Operational Period shall end once 90 days has elapsed following the premises visit, or the date on which any party other than Company subsequently tests, inspects, adjusts, repairs, or replaces such Customer Equipment, whichever occurs earlier. It is intended that the running of this time period be a complete defense and absolute bar to such claims and lawsuits.

Absent actual, specific knowledge of a dangerous condition on a Customer's premises, gained through notice to the Company by the Customer, or by the Company's discovery during the Non-Incident Operational Period described above, the Company's obligation to provide warnings or safety information of any kind to the Customer shall be limited to the obligations that are imposed by Sections (1)(K), (1)(L), (10)(J) and (12)(S) 2 of the Safety Standards of the Pipeline Safety Regulations of the State of Missouri, 4 CSR 240-40.030(1)(K)-(L), (10)(J) (12)(S) 2; and Section 192.16 of the Pipeline Safety Regulations of the U.S. Department of Transportation, 49 CFR 192.16. Compliance with the aforesaid obligations to notify shall constitute a complete defense and bar to any claims or lawsuits by the Customer or anyone else against the Company for loss, damage or injury to persons or property, or death, alleging the breach of any duty to warn or provide safety information. Delivery of warnings and information by the Company to the Customer may be made by means of electronic message to customers that receive bills electronically or by a brochure or similar document that is included in the mailing envelope for a billing statement addressed to the Customer. No special language or

legend is required on the envelope in which such notices are delivered. Such delivery in the United States mail, postage prepaid, or electronically shall constitute compliance with the aforesaid regulations.

Company will use reasonable diligence to furnish to Customer continuous gas service with natural gas that does not contain constituents (water or debris) that would materially adversely affect the proper and safe operation of Customer Equipment, but does not guarantee the supply of gas service against irregularities or interruptions. Company shall not be considered in default of its service agreement with customer and shall not otherwise be liable for any damage or loss occasioned by interruption, failure to commence delivery, or failure of service or delay in commencing service due to accident to plant, lines, or equipment, strike, riot, act of God, order of any court or judge granted in any bonafide adverse legal proceedings or action or any order of any commission or tribunal having jurisdiction; or, without limitation by the preceding enumeration, any other act or things due to causes beyond Company's control. Any liability of the Company under this paragraph due to the Company's negligence shall be limited to the charge for service rendered during the period of interruption or failure to render service, which shall be the sole and exclusive remedy, and shall in no event include any indirect, incidental, or consequential damages.

The Company's obligation to odorize gas supplied to the Customer shall be limited to compliance with 40 CSR 240-40.030(12)(P). The Company shall not have any duty to warn or advise Customer regarding the limitations of any odorant used by Company in compliance with 40 CSR 240-40.030(12)(P), and shall not have any liability to Customer or anyone else for failure to provide such warnings or advice. The Company shall not have any duty to warn or advise Customer regarding the availability of any supplemental warning devices or equipment, including, but not limited to, electronic gas detectors, that might be used to provide a warning of leaking gas, and shall not have any liability to Customer or anyone else for failure to provide such warnings or advice.