

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 14th day of
November, 2008.

In the Matter of Laclede Gas Company's Tariff)
Designed to Permit Early Implementation of)
Cold Weather Rule Provision and to Permit)
Laclede to Collect Bad Debt Through the PGA)

Case No. GT-2009-0026
Tariff No. JG-2009-0033

**ORDER DENYING STAFF'S MOTION TO REJECT TARIFF AND
DISMISS CASE**

Issue Date: November 14, 2008

Effective Date: November 14, 2008

On August 5, 2008, acting on the motions of the Office of the Public Counsel and the Commission's Staff, the Commission suspended a tariff filed by Laclede Gas Company. Laclede's tariff would implement some provisions of the Commission's Cold Weather Rule early,¹ and would allow Laclede to recover the gas cost portion of its bad debt expense through its PGA clause. Following a prehearing conference, the Commission adopted a procedural schedule recommended by the parties. That procedural schedule required the parties to prefile testimony and scheduled an evidentiary hearing for December 8 and 9. Thus far, Laclede has prefiled direct testimony, and Staff and Public Counsel have prefiled rebuttal testimony. Surrebuttal testimony from all parties is to be filed on November 20.

On October 20, Staff filed a motion urging the Commission to summarily reject Laclede's tariff and to dismiss this case. Staff filed suggestions in support of its motion on October 22. Public Counsel responded in support of Staff's motion on October 30.

¹ Because of the passage of time, all parties now agree the portion of Laclede's tariff that would have implemented provisions of the Cold Weather Rule early for this year is now moot.

Laclede replied to both Staff and Public Counsel on November 5.

Staff's motion to reject Laclede's tariff argues that the Laclede's attempt to recover the gas cost portion of its bad debt expense through the PGA mechanism must be rejected as single-issue ratemaking. According to Staff, the Commission could properly consider Laclede's proposed tariff change only in a rate case. Public Counsel's response in support of Staff's motion adds an argument that Laclede's tariff would also constitute retroactive ratemaking. Laclede denies that its tariff constitutes either retroactive or single-issue ratemaking. More importantly for this order, Laclede also contends Staff's motion is procedurally improper.

Staff bases its motion to dismiss on Missouri Rule of Civil Procedure 55.27(a)(6), which allows an action to be dismissed for failure to state a claim upon which relief can be granted. As Staff's motion recognized, "[o]n a motion to dismiss for failure to state a cause of action, the court reviews the allegations of the petition to determine whether the facts pled therein are sufficient as a matter of law."² Unfortunately for Staff's motion, this case exists only to review and consider Laclede's tariff filing. Laclede has not filed any petition for the Commission to review and Laclede is not required to plead any facts, or otherwise state a claim. Therefore, there is nothing to dismiss for failure to state a claim.

Staff's motion is actually asking the Commission to consider facts outside any pleading. Therefore, if Staff's motion is to be considered, it must be treated as a motion for summary determination.³ Commission Rule 4 CSR 240-2.117(1) controls motions for summary determination before the Commission. However, that rule specifically states that it does not apply "in any case seeking a rate increase or which is subject to an operation of

² *State ex rel. Union Electric Co. v. Dolan*, 256 S.W.3d 77, 82 (Mo. banc 2008)

³ Mo R. Civ. P. Rule 55.27(a).

law date.” This case, like all tariff cases, is subject to an operation of law date. Therefore, the Commission’s rules do not allow for summary determination in this case.

Aside from the rule’s lack of support for Staff’s motion, a summary determination would not be appropriate in this case. The Commission needs to consider the facts and the controlling law to determine whether the challenged tariff should be allowed to become effective. That consideration can best be accomplished through the evidentiary hearing process, which is already well underway. There is no need to make a hasty determination on an incomplete record. The Commission will deny Staff’s motion to reject Laclede’s tariff and will allow this case to proceed to hearing.

THE COMMISSION ORDERS THAT:

1. Staff’s Motion to Reject Tariff and to Dismiss Docket is denied.
2. This order shall become effective immediately upon issuance.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Jarrett, and Gunn, CC., concur;
Clayton, C., dissents.

Woodruff, Deputy Chief Regulatory Law Judge