

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

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

**PUBLIC COUNSEL'S
MOTION TO REJECT TARIFF**

COMES NOW the Missouri Office of the Public Counsel and for its Motion to Reject Tariff states:

1. On August 22, 2008, Laclede Gas Company filed four (4) original tariff pages to establish limits on Laclede's liability towards customers that arise in civil lawsuits as a result of Laclede's negligent actions (*see* Attachment A). Laclede's proposal would limit a consumer's ability to hold Laclede liable "in any lawsuit" resulting from Laclede's provision of natural gas service. Laclede's proposal would also include language asserting that Laclede's adherence to minimum safety regulations negates Laclede's obligation to fulfill "common law duties." Public Counsel requests that the Commission reject the proposed tariff because it is not in the public interest to lessen Laclede's safety obligations and because it would unlawfully expand the Commission's authority.

2. Laclede characterizes its tariff proposal as "clarifying" Laclede's liability. However, Laclede's tariff does not include a "Company Liability" section. Laclede's proposal would actually create a new tariff section that establishes new limitations on Laclede's liability towards its customers.

3. In reference to the Commission's safety regulations found in 4 CSR 240-40.030 and the Federal safety regulations found in 49 C.F.R. Part 192, Laclede's proposed tariff states:

Compliance by the Company with [federal and state safety regulations] 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, **including common law duties**. (Sheet No. R-11-a)

Compliance with said regulations **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. [emphasis added]. (Sheet No. R-11-a)

Compliance with the aforesaid regulations **shall constitute a complete defense and bar to any claims or lawsuit** 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. (Sheet No. R-11-b) [emphasis added].

Public Counsel asserts that approving this tariff language is beyond the Commission's jurisdiction. The authority granted to the Commission by the Missouri Legislature does not include the authority to limit Laclede's liability in a court of law. The Commission "is an administrative body created by statute and has only such powers as are expressly conferred by statute and reasonably incidental thereto." State ex rel. AG Processing, et al. v. P.S.C., 100 S.W.3d 915 (Mo. App. 2003). It is well established that the Commission "has no power to determine damages, award pecuniary relief, declare or enforce any principle of law or equity." State of Missouri, ex rel. Fee Fee Trunk Sewer, Inc., v. Litz, 596 S.W.2d 466 (Mo. App. E.D. 1980). Approving the proposed tariffs and limiting a consumer's ability to make legal and equitable claims in a court of law would be an unlawful declaration of a principle of law and equity.

4. Laclede's proposal would allow Laclede to avoid liability so long as Laclede complied with the Commission's safety regulations found in 4 CSR 240-40.030 and the Federal safety regulations found in 49 C.F.R. Part 192. These rules establish the *minimum* standards for safety, and impose an inherent obligation upon Laclede to go beyond these standards if necessary to ensure the safe distribution of gas. Commission rule 4 CSR 240-40.040 specifically states that its purpose is to prescribe "minimum safety standards regarding the design, fabrication, installation, construction, metering, corrosion control, operation, maintenance, leak detection, repair and replacement of pipelines used for the transportation of natural and other gas." Likewise, the Federal regulations Title 49, Chapter 1, Part 192 is titled "Part 192 – Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards" and states that Part 192 "prescribes minimum safety requirements." Limiting Laclede's liability as proposed would be equivalent to the Commission concluding that 4 CSR 240-40.030 and 49 C.F.R. Part 192 are the *maximum* safety standards required of Laclede. Approving the proposed tariff change is against the public interest because it would lessen Laclede's incentive to ensure natural gas service is provided in the safest manner possible.

5. The Commission has a duty to protect the public and ensure Laclede operates its distribution system safely. The Commission does not have a duty to insulate Laclede when its negligence causes bodily harm, death, or damage to personal property. The Missouri Supreme Court held that the "whole purpose" of the Commission "is to protect the public." State ex rel. City of St. Louis v. P.S.C., 73 S.W.2d 393 (Mo. 1934). No consumer benefits can come from reducing Laclede's incentive to ensure public safety.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission reject proposed Tariff No. JG-2009-0145.

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

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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 8th day of October 2008:

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KENNETH J. NEISES
EXECUTIVE VICE PRESIDENT
ENERGY & ADMINISTRATIVE SERVICES

August 22, 2008

VIA EFIS

Secretary
Missouri Public Service Commission
Governor Office Building
200 Madison Street
Jefferson City, MO 65101

Dear Secretary:

Enclosed herewith for filing with the Missouri Public Service Commission are the following revised tariff sheets which are applicable to both divisions of Laclede Gas Company:

P.S.C. MO. No. 5 Consolidated
Original Sheet No. R-11-a
Original Sheet No. R-11-b
Original Sheet No. R-11-c
Original Sheet No. R-11-d

In the Company's last general rate case proceeding, Case No. GR-2007-0208, the Company filed several tariff sheets to clarify its liability for damages occurring on customer piping and equipment beyond the Company's meter. Even though the settlement of such case ultimately did not include any tariff revisions in this area, it was understood that the Company would subsequently make a separate tariff filing, represented by the enclosed revisions, to address such a clarification. It should be noted that, prior to the instant filing, the Company provided the Staff with a draft of its proposed tariff revisions, and the enclosed sheets incorporate modifications suggested by the Staff. The Company has also provided a four month period before the effective date of such sheets in order to allow additional time for discussion.

These revised tariff sheets have an issue date of August 22, 2008 and an effective date of December 22, 2008.

Sincerely,



Enclosures
cc: Office of the Public Counsel

**P.S.C. MO. No. 5 Consolidated, Original Sheet No. R-11-a
CANCELLING All Previous Schedules**

Laclede Gas Company

Name of Issuing Corporation or Municipality

For

Refer to Sheet No. R-1

Community, Town or City

RULES AND REGULATIONS

12-a. Company's Liability

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.

The Company shall be responsible for the safe transmission and distribution of gas until it passes the Point of Delivery to the Customer. Compliance by the Company with 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, 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, including common law duties. Compliance with said regulations 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 as provided by 4 CSR 240-40.030(10)(J) and (12)(S), or unless the Company expressly agrees in writing to assume such obligations. 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. Any obligation or liability assumed by or imposed on the Company for installation, repair, inspection, testing, operation, or maintenance of Customer Equipment or for providing any warnings in connection with the operation and use of such Customer Equipment shall expire 90 days after such work has been completed, provided that Company shall have no liability for any loss, injury or damage to persons or property, or death, that is caused in whole or in part by the failure of a piping

DATE OF ISSUE August 22, 2008
Month Day Year

DATE EFFECTIVE December 22, 2008
Month Day Year

ISSUED BY K.J. Neises, Executive Vice President, 720 Olive St., St. Louis, MO 63101
Name of Officer Title Address Attachment A

P.S.C. MO. No. 5 Consolidated, Original Sheet No. R-11-b
CANCELLING All Previous Schedules

Laclede Gas Company

Name of Issuing Corporation or Municipality

For

Refer to Sheet No. R-1

Community, Town or City

RULES AND REGULATIONS

12-a. Company's Liability (continued)

installation, including its fittings, connectors and coupling, that was installed in compliance with the applicable regulations listed above and provided further that 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) 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), (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 regulations shall constitute a complete defense and bar to any claims or lawsuit 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 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, shall constitute compliance with the aforesaid regulations.

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.

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ISSUED BY K.J. Neises, Executive Vice President, 720 Olive St., St. Louis, MO 63101

Name of Officer

Title

Address

Attachment A

P.S.C. MO. No. 5 Consolidated, Original Sheet No. R-11-c
CANCELLING All Previous Schedules

Laclede Gas Company

Name of Issuing Corporation or Municipality

For

Refer to Sheet No. R-1

Community, Town or City

RULES AND REGULATIONS

12-a. Company's Liability (continued)

Subject to the Company's responsibility for the safe transmission and distribution of gas as provided in this rule, and except as otherwise provided for herein, (A) Company shall not 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, the release or leakage of gas on the Customer's side of the Point of Delivery, or from any failure of or defective, improper or unsafe condition of any Customer Equipment; and, without limitation of the foregoing, (B) 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, arising in whole or in part from (i) a leak and ignition of gas from Customer Equipment, or (ii) a release of carbon monoxide from Customer Equipment.

Company will use reasonable diligence to furnish continuous gas service to Customer, 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 or breakdown of 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, or attributable to the negligence of the Company, its employees, contractors or agents.

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ISSUED BY K.J. Neises, Executive Vice President, 720 Olive St., St. Louis, MO 63101

Name of Officer

Title

Address

Attachment A

**P.S.C. MO. No. 5 Consolidated, Original Sheet No. R-11-d
CANCELLING All Previous Schedules**

Laclede Gas Company
Name of Issuing Corporation or Municipality

For Refer to Sheet No. R-1
Community, Town or City

RULES AND REGULATIONS

12-a. Company's Liability (continued)

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.

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