

LACLEDE GAS COMPANY
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AREA CODE 314
342-0532

MICHAEL C. PENDERGAST
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February 24, 2000

HAND DELIVERED

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Harry S Truman Building
301 W. High Street, 5th Floor
Jefferson City, MO 65101

FILED²
FEB 24 2000
Missouri Public
Service Commission

RE: Case No. GO-2000-395

Dear Mr. Roberts:

Enclosed for filing, please find the original and fourteen copies of the Response of Laclede Gas Company to Staff Memorandum and Recommendation in the above-referenced case. Please see that this filing is brought to the attention of the appropriate Commission personnel.

Thank you for your consideration in this matter.

Sincerely,


Michael C. Pendergast

MCP:jaa

cc: All parties of record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

FEB 24 2000

Missouri Public
Service Commission

In the Matter of Laclede Gas Company's)
Gas Supply Incentive Plan (GSIP II)) Case No. GO-2000-395

**RESPONSE OF LACLEDE GAS COMPANY
TO STAFF MEMORANDUM AND RECOMMENDATION**

COMES NOW Laclede Gas Company ("Laclede" and "Company") and for its
Response to Staff's Memorandum and Recommendation, states as follows:

1. On February 1, 2000, Laclede filed a revised tariff sheet for the purpose of extending the term of the Company's Gas Supply Incentive Plan (GSIP II) and extending to all parties the right to seek a termination or modification of the incentive plan should an unusual and unforeseen event occur that would have a significant impact on purchased gas costs. In addition, the revised tariff language also specified that the Commission could suspend the GSIP II in the event, and at such time as, legislation materially affecting the operation of the GSIP is passed by the General Assembly and implemented in accordance with the terms of such legislation. This latter provision was proposed by the Company in direct response to, and in an effort to specifically accommodate, the sole reason given by the Commission for not initially authorizing a longer term for the GSIP II; namely that a shorter time frame would "allow the Commission to monitor any action that the Missouri Legislature may take during the year 2000 in the area of energy deregulation." See the Commission's September 9, 1999 *Report and Order* in Case No. GT-99-303, p. 14. Simply put, the revised tariff language proposed by the Company

would in no way prohibit and, in fact, contemplates that the Commission will continue to monitor energy deregulation not only this year but also in future years as well.

2. On February 15, 2000, the Staff of the Missouri Public Service Commission ("Staff") filed its Memorandum and Recommendation in the above-captioned case (hereinafter "Staff's Recommendation") in which it recommended that Laclede's revised tariff sheet be suspended. Staff also recommended that a prehearing conference be scheduled for sometime after the conclusion of the current legislative session in order to enable the parties to discuss approval of the tariff sheet and, if necessary, to recommend the establishment of a procedural schedule.

3. Staff's Recommendation that the Commission suspend the revised tariff sheet, rather than permit it to go into effect on March 3, 2000, is both disappointing and, in Laclede's view, totally unwarranted. It is clear from both its Recommendation in this case, as well as its previous position regarding major elements of the GSIP II, that the Staff would have preferred that the Commission adopt a markedly different incentive program for Laclede than the one that was actually approved by the Commission less than six months ago in Case No. GT-99-303. Although Laclede recognizes and respects the Staff's right to disagree with the outcome of Case No. GT-99-303, the Company does not believe that the Commission should permit such lingering differences to delay the extension of an incentive plan that the Commission has so recently found to be in the public interest and that continues to generate significant savings and other benefits for the Company's customers and shareholders alike. This is particularly true in light of the Staff's clear failure to rebut, or even call into question, the various reasons given by the

Company as to why the revised tariff filing should be allowed to go into effect on its proposed effective date.

4. Nowhere is this more apparent than in Staff's failure to address the meaning and significance of those measures that the Company has proposed to ensure that the Commission, Staff and other parties can act quickly to recommend and/or make modifications to the GSIP II (including termination thereof) in the event such action is warranted by changed circumstances. As the Staff acknowledges at pages 1 and 2 of its Recommendation, these include modifications to the GSIP II tariff that would permit *all* parties, rather than just the Company, to seek a termination or modification of the incentive plan should an unusual and unforeseen event occur that would have a significant impact on purchased gas costs. They also include the addition of new tariff language that would specifically permit the Commission to suspend the GSIP II in the event, and at such time as, legislation materially affecting the operation of the GSIP is passed by the General Assembly and implemented. In addition to proposing tariff language that would permit the parties to seek modifications to, or termination of, the GSIP II in the event such developments were to occur, the Company has also voluntarily proposed measures designed to provide the Staff and other parties with the means to monitor and identify such developments on a more timely basis. Most notably, these include the Company's proposal in this case (which has since been adopted by the Commission) to provide Staff and Public Counsel with quarterly summaries of the results achieved by the Company under GSIP II many months sooner than would have otherwise been the case under the prior procedures approved to monitor the GSIP.¹

¹ Under the prior procedures approved by the Commission for monitoring the impact of the GSIP, the Company was not required to file any information regarding the results achieved under the incentive plan

5. Amazingly, the Staff makes absolutely no effort in its Recommendation to explain to the Commission why these proposals do not provide an adequate and reasonable set of safeguards that would allow the GSIP II to be extended while still permitting it to be modified or terminated in the event of changed circumstances. Instead, the Staff simply cites the Company's proposed tariff language and then inexplicably states at page 2 of its Recommendation that it "has no opinion regarding this matter." Needless to say, it is difficult to understand how the Staff could have "no opinion" about proposed tariff language that is so central to a determination of whether the GSIP II should be extended. The only apparent reason for this critical omission is that it gives Staff free reign to raise various "concerns" regarding the proposed extension of the GSIP II without having to acknowledge or deal in any way with the obvious fact that such concerns have already been fully addressed and accommodated by the Company's proposed tariff language. Thus, the Staff is able to raise the specter of potential legislative action on energy deregulation, without ever having to explain why such a remote possibility should preclude extension of an incentive plan that, in accordance with the Company's tariff proposal, could be suspended in the unlikely event that such legislation was actually passed and implemented.² Similarly, as it did in Case

until after each year of the plan was completed and the Company submitted its annual monitoring report in conjunction with its annual ACA filing. *See Re: Laclede Gas Company*, Case No. GR-96-193, Order Approving Report Forms and Directing Periodic Filing, p. 2 (March 7, 1997).

² In its Recommendation, the Staff notes that four or more bills relating to energy deregulation have been introduced and heard in this session of the General Assembly. Staff does not suggest, however, that any of these bills would result in a further restructuring of the natural gas industry in Missouri. Indeed, the possibility of pursuing legislation to restructure the natural gas industry was not even mentioned during the February 22, 2000 meeting of the Senate Commerce and Environment Committee at which several bills relating to electric restructuring were discussed. Nor does the Staff suggest that any of the bills relating to restructuring of the electric industry would actually be implemented prior to the end of the Company's requested extension of the GSIP II, even in the unlikely event such bills were actually to be passed in this session of the General Assembly. Finally, nowhere in its Recommendation does the Staff take issue with Laclede's assessment, based on comments of the Co-Chair of the Joint Interim Committee on

No. GT-99-303, the Staff is able to raise concerns over the possible impact of potential or actual changes to Laclede's existing supply and transportation agreements, and even its affiliate's supply arrangements, while studiously ignoring the fact that it would be free under the Company's proposal to recommend any necessary changes to the GSIP II if and when such developments actually have an effect on the Company's purchased gas costs.

6. Regardless of the merits of Staff's concerns (or the lack thereof), it is fundamentally inappropriate for the Staff to raise them without any corresponding effort to explain whether, and to what extent, they have already been alleviated by the Company's proposed tariff language. Staff's silence on this critical issue can only mean one thing; namely, that Staff cannot and does not have a tenable explanation as to why its so-called concerns should be given any weight in light of the steps the Company has taken to address them. For this reason alone, Staff's Recommendation should be disregarded by the Commission.

7. The Staff's apparent goal of simply forestalling any extension of the GSIP II, regardless of any real need for such a delay, is also evidenced by its approach to the other measures proposed by the Company for facilitating Staff's review of the Company's GSIP II performance. As previously noted, under the procedures previously followed by the Commission, the Staff would not have received *any* information regarding the results of the GSIP II until after the first year of the plan had been completed and the Company had filed its annual monitoring report in conjunction with its

Telecommunications and Energy, that no restructuring legislation of any kind is likely to be passed until certain related tax issues are resolved, a process that will in all probability require a vote of the people in November of this year -- a date well beyond the GSIP's current expiration date of September 30, 2000. Even if such a vote was successful, prior experience with restructuring efforts elsewhere would indicate that implementation of any following restructuring legislation would require at least several additional years beyond that date.

ACA filing. Moreover, the Staff's audit of the Company's performance under the GSIP II would not have begun until such time. Despite these prior practices, the Company proposed in this case to submit quarterly reports summarizing the results achieved under its GSIP II so that the Staff would have more information sooner to monitor the Company's performance. In return for the Company's efforts to be more responsive, the Staff has sought to use these quarterly reports in its Recommendation as simply another pretext for forcing a delay in the GSIP II's extension. Even though the Staff in prior years would not even have begun to review the Company's GSIP performance for at least another nine months, it now suggests that it must fully evaluate and conduct discovery on at least the first two quarterly reports before it can even consider recommending an extension of the GSIP II. Moreover, it is clear from the data requests already submitted by the Staff, as well as statements in its Recommendation, that Staff contemplates its review as being nothing short of a full scale audit, including an audit of matters that are not even reflected in current GSIP II results.³ It is also clear from page 2 of its Recommendation that Staff intends to use its audit as "a basis upon which to modify, extend or terminate GSIP II."

8. It is simply unreasonable to require that extension of the GSIP II be conditioned on the Staff's completion of an extensive audit, the purpose of which is to

³ Rather than make even a minimal effort to restrict its review to GSIP II and the results achieved thereunder, the Staff has submitted data requests that ask for documents relating to matters that are under negotiation and that therefore may never be finalized, let alone reflected in the Company's GSIP results. Moreover, the Staff has also requested information relating to transactions that have been specifically excluded by the Commission from the GSIP II, including information relating to the Company's off-system sales. As a result, the Staff is apparently now recommending that an extension of the GSIP II be conditioned on its receipt of information relating to matters that have not been included in or even explicitly excluded from any GSIP II treatment. While Laclede believes such discovery efforts go well beyond what was authorized by the Commission in this case, they certainly do not provide a legitimate basis for delaying the Company's requested extension of the GSIP II.

determine whether to modify, extend or terminate the GSIP II. Nearly every conceivable issue relating to the structure and anticipated impact of the GSIP II was exhaustively litigated and carefully decided by the Commission in Case No. GT-99-303. More than a thousand pages of testimony and briefs, three full days of hearings, and months of discovery, including depositions of the Company's senior officers and gas supply personnel, were devoted to this task. Every party, including the Commission Staff, had opportunity after opportunity to present their views on what type of incentive program should be approved by the Commission. And yet less than six months after the conclusion of that proceeding, the Staff is effectively suggesting that the same exercise should be commenced anew.⁴ As evidenced by its proposal to extend the GSIP II for only another two years, Laclede recognizes that the incentive program should not be permitted to continue indefinitely without an opportunity for further review and evaluation of its merits. Neither, however, should it be subject to a full scale re-examination and potentially massive changes after less than six months of operation simply because a party who opposed it in the first instance would have preferred the adoption of a different incentive plan.⁵ If the Staff has any concerns regarding the

⁴ At page 2 of its Recommendation, the Staff states that it "agrees that unnecessary duplicative litigation should be avoided." However, by urging both a suspension of the Company's tariff filing, as well as a full scale re-examination of the GSIP II in order to develop a "better basis upon which to modify, extend or terminate" it, it is clear that Staff seeks nothing less than an opportunity to fully relitigate the issues decided in Case No. GT-99-303. If the tariff filing is suspended, Laclede has little doubt that Staff's proposal for a prehearing conference in order to recommend the establishment of a procedural schedule "if necessary" will inevitably result in a full blown proceeding. It is simply untenable to assume otherwise given Staff's prior opposition to the GSIP and its apparent desire to completely revisit the issue of how the GSIP II should be structured.

⁵ Nor can this type of accelerated and virtually continuous re-examination of the GSIP II be justified on the grounds that the incentive plan is an "experimental program." Since major elements of the plan have been in effect for more than three years and since the Commission Order approving the GSIP II did not refer to it as an "experimental program", such a characterization does even appear to be accurate. Nevertheless, to the extent that some elements of the GSIP II could be considered "experimental", Staff has not explained

Company's compliance with the terms of the GSIP II it will be free to raise them at the appropriate time, as it has in the past. Moreover, if any legislation or changed circumstances actually arise that warrant a modification or termination of the GSIP, the Company has proposed tariff language that would permit such developments to be identified and addressed on an expeditious basis through any necessary modifications to the program.

9. In view of all of these considerations, it is clear that the Staff has failed to provide any valid reason as to why the Company's revised tariff filing should be suspended. With its proposed tariff language, the Company has fully accommodated both the Commission's stated reason for initially approving the GSIP II for only a one year term as well as the concerns raised by Staff in its Recommendation. Moreover, the Company has done so in a way that is fully respectful of the General Assembly's prerogative to consider energy deregulation and have its handiwork implemented if legislation should some day be passed. At the same time, the Company's approach also recognizes the equally important proposition that the Commission should not indefinitely defer the exercise of its own regulatory powers and expertise simply because some legislation affecting those powers may be passed at some point in the future. Under such circumstances, further delay in extending the GSIP II will accomplish nothing other than to create needless uncertainty over the standards that will ultimately be used to govern the Company's performance in this area. Laclede therefore respectfully requests that the Commission permit the Company's revised tariff filing to become effective in accordance with its proposed effective date.

how it could possibly be appropriate (or the least bit instructive) to review and potentially modify such an experiment before it has had any real opportunity to unfold.

WHEREFORE, for the foregoing reasons, Laclede Gas Company respectfully requests that the Commission not suspend its revised tariff filing of February 1, 2000, but instead permit such tariff to become effective in accordance with its proposed effective date of March 3, 2000.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michael C. Pendergast".

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CERTIFICATE OF SERVICE

Michael C. Pendergast, Assistant Vice President and Associate General Counsel for Laclede Gas Company, hereby certifies that the foregoing Response of Laclede Gas Company to Staff Memorandum and Recommendation has been duly served upon all parties of record to this proceeding by placing a copy thereof in the United States mail, postage prepaid, or by hand delivery, on this 24th day of February, 1999.

Michael C. Pendergast