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February 3, 2003

FILED³

FEB 03 2003

Missouri Public
Service Commission

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

Re: Case No. GT-2003-0117

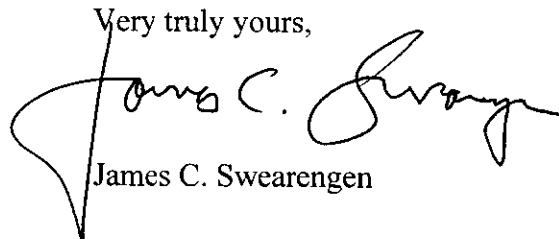
Dear Mr. Roberts:

Enclosed for filing on behalf of Laclede Gas Company, please find an original and eight (8) copies of a Reply to Staff's and Public Counsel's Responses.

Would you 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.

Very truly yours,



James C. Swearngen

JCS/lar

Enclosure

cc: Dan Joyce
John Coffman
Ron Molteni

FEB 03 2003

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

Missouri Public
Service Commission

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

REPLY TO STAFF'S AND PUBLIC COUNSEL'S RESPONSES

COMES NOW Laclede Gas Company ("Laclede" or "Company") and for its

Reply to Staff's and Public Counsel's Responses states as follows:

1. On or about January 29, 2003, and January 31, 2003, respectively, the Staff and Public Counsel filed their Responses to Laclede's Motion for Reconsideration in this proceeding (hereinafter "Motion for Reconsideration"). In that Motion for Reconsideration, the Company had requested that the Commission reconsider its January 16, 2003 Report and Order and approve the experimental Catch-Up/Keep-Up Program (the "Program") at a reduced funding level. Specifically, the Company requested that the Commission approve the Program at the funding level that the Office of the Public Counsel had proposed as an alternative in the event the Commission chose to move forward with a low-income assistance program.

Response to Staff

2. In its Response, the Staff does not attempt to address in any substantive way the arguments that Laclede has presented throughout this proceeding as to why the Company's Program is lawful and fully consistent with other experimental programs that have previously been approved by the Commission and upheld by the Courts.¹ Nor does

¹ For example, the Staff asserts at pages 5 and 6 of its Response that the Company's pipeline discount funding mechanism must have an historical baseline in order to be a "properly designed" incentive program. Nowhere, however, does the Staff explain how it can say such a baseline is required when previous pipeline discount incentive mechanisms have contained none and when the Courts have upheld

the Staff address in any meaningful way the many reasons given by the Company in its Motion for Reconsideration as to why its proposed reduction in the funding level for the Program – a funding level that is amply supported by competent and substantial evidence on the record – would further ameliorate these concerns. (*See Motion for Reconsideration*, pp. 4-9; Exh. 4, pp. 10-11; Exh. 13).² Instead, the Staff does what it has continually done for the past seven months – pay homage to the concept of helping the Company’s most vulnerable customers while endlessly finding fault with every suggestion or attempt at compromise that Laclede has made in an effort to make that help a reality. In short, Staff continues to insist that since the Program does not meet some unstated and ever evolving standard of perfection, it should be rejected, together with all the good it would do for customers who vitally need additional assistance.

3. Indeed, Staff has taken its unrelenting negativism one step further in its latest response by suggesting that the Company’s request for reconsideration represents an improper attempt: (a) to replace lost GSIP revenues “on the backs of its most vulnerable customers”³ and (b) negotiate the terms of the Program with the Commission directly, instead of with the other parties as part of the “collaborative process” that the

gas cost incentive mechanisms that do not have such baselines. (*See Laclede’s Motion for Reconsideration*, pp. 6-7).

² Indeed, rather than provide a substantive rejoinder to the Company’s analysis of why its experimental Program is lawful and in accord with numerous Commission and judicial precedents, Staff simply repeats its assertion, over and over again, that the Company’s proposed funding mechanism is unlawful (*see* pages 2, 3 and 4). The mere repetition of a claim, however, does not make it true. Nor can it serve as a substitute for reasoned analysis. To the contrary, Staff’s repeated failure to respond to the Company’s arguments regarding the Commission’s lawful authority to approve such a Program on an experimental basis -- to explain how or why those arguments are flawed -- can only be construed as an admission by Staff that the Company’s contentions are valid.

³ Contrary to Staff’s assertion at page 5 of its Response, the Company has never “admitted on the stand that the funding that Laclede proposes is to replace the revenue from its failed GSIP.” As Staff well knows, while the revenue would come from the same kind of pipeline discount incentive feature that was included

Commission mentioned in its Report and Order.⁴

4. As to the first assertion, Laclede has by now reconciled itself to the fact that it will never receive any credit, let alone positive recognition, for its consistent efforts over the years to initiate reconnection policies and outreach programs that go well beyond the strict requirements of the Commission's Cold Weather Rule and that have allowed thousands of low-income customers to receive service who would have otherwise been left without the means to heat their homes. (See pages 4 to 8 of the Company's Brief in this matter). As the record in this case showed, while these efforts have come at an uncompensated cost to Laclede that measures in the millions of dollars, they have nevertheless been continued unabated (even during periods when the Company has been unable to earn its authorized return). (Exh. 1, pp. 19-24; Exh. 2, p. 6, Tr. at 200). Nevertheless, such efforts are apparently of little or no consequence to the Staff and count for absolutely nothing in Staff's assessment of the value and sincerity of the Company's proposals to do even more for its most vulnerable customers with the needed

in the GSIP, every last dime of that revenue will be returned to customers, either in rates or through Program benefits.

⁴The Staff also asserts at page 2 of its Response that the Program does not address the "real need of low-income customers for affordable rates." Once again, however, such assertions simply ignore the fact that the Program was never designed to provide an ongoing reduction in the Company's approved, current cost-based rates but instead to provide customers with the means to pay those rates by allowing them to work off the arrearage part of their bill. Moreover, as Mr. Imhoff acknowledged during cross-examination, while Staff may prefer that financial assistance be provided to customers in the form of a credit to their current bills as is done under the MGE program, he had no idea whether that approach would be any more effective in helping customers than the Company's proposal to apply credit to the customer's arrearages since he had no knowledge of any cost/benefit analysis that may or may not underlie the MGE experiment (Tr. 668-671, 685-687). Such assertions also ignore the fact that customers receiving service under a levelized bill that includes both arrearages and current charges do not care whether a credit to the bill is theoretically attributed to one component or another of the bill. The only thing that matters in terms of affordability is how much the customer has to pay on an overall basis and the record shows that the Company's proposal provides as much relief or more in that regard as MGE's low-income program that the Staff supports. (See Tr. at 685-87).

assistance that would be afforded by the Program. So be it. In the end, however, actions must speak louder than words. And in terms of who has the interests of low-income customers foremost in mind, the Company will place its demonstrated actions on behalf of those customers -- actions that have been reflected in thousands of daily decisions and countless accommodations -- against the claims of any other party who purports to speak on their behalf.

5. Equally baseless is Staff's assertion that Laclede has improperly attempted to negotiate terms of the Program directly with the Commission and that such a matter can only be addressed as part of a "collaborative process" in which all parties must reach agreement on the content of any Program.⁵ In fact, what the Company has done is simply ask the Commission to do what it is supposed to do under the laws of this state, namely, make and decide public policy when the parties that appear before it are unable to reach a consensus on what that policy should be. Moreover, consistent with the practice that is followed in virtually every contested proceeding, the Company has asked the Commission to make that public policy determination based on alternatives that were thoroughly presented, discussed and examined during the evidentiary hearing in this proceeding. (See Exh. 4, pp. 10-11; Exh. 13, Tr. at 396, 496-97).⁶

6. In view of these considerations, the only thing unusual in this case is the notion implicit in Staff's Response that the Commission should not act to fulfill this

⁵ See Staff's Response, pp. 2 and 4.

⁶ Staff also asserts at page 1 of its Response that Laclede is asking the Commission to "pre-approve a tariff that Laclede has not filed." In fact, Laclede is simply asking the Commission to do what it does in virtually every contested rate case or other proceeding -- make a policy decision regarding an issue that can then be reflected in compliance tariff sheets. To find that such a request is improper would be to ignore in its entirety decades of Commission practice and procedure regarding the way decisions are made and reflected in tariffs in contested cases. Nevertheless, if the Commission believes it would be helpful to its evaluation

statutory responsibility unless and only until the Company can secure Staff's blessing on a low-income "program" that fully accords with Staff's own policy preferences. Contrary to such a view, however, the Commission is not and never has been restricted to approving those policy judgments – and only those policy judgments – with which its Staff can concur.

7. Nor is there any reason to believe based on the experience of the past seven months that a collaborative effort would, in any event, lead to a meaningful low-income program at any time in the foreseeable future. While the Staff may wish to pretend otherwise, the fact remains that the Company has tried throughout this period to "negotiate" and "collaborate" with Staff on the development of a low-income program. This included a major effort by Laclede to incorporate the terms of a low-income assistance program in an overall settlement of its recently concluded rate case. (*See* Tr. at 281; Exh. 21, p. 2). And the Company continued that effort right up to the moment it learned that its proposal, even with the direct incentive feature completely eliminated, was unacceptable to Staff – a revelation that did not come until just after the parties had reached agreement on an overall revenue requirement.

8. Even then, however, the Company continued to solicit feedback from the Staff and other interested parties regarding the terms of the Program and, based on that feedback, withdrew and refiled its Program with numerous revisions that were designed to respond to the concerns that had been raised. (Exh. 1, pp. 7-13). When those were also deemed inadequate, the Company again indicated its willingness to adopt further changes in response to Public Counsel's alternative proposal and other suggestions made

of this matter, Laclede would be more than willing to file new tariff sheets for its review when 24 hours of receiving an order directing it to do so.

by Staff in their pre-filed testimony. (See Exh. 13). And with its Motion for Reconsideration, the Company has made one final effort to salvage what it sincerely believes is a worthwhile Program by proposing adoption of the last and perhaps most significant revision that had been proposed by Public Counsel during the evidentiary hearing in this case.

9. Throughout this process, the Company's efforts have been met with nothing but criticism. No sooner did the Company make revisions to address a set of Staff concerns regarding supposed flaws in the Program than an entirely new set of concerns would pop up like dandelions on a summer lawn. And the more the Company tried to address these concerns, or even concur with the explicit recommendations of other parties, the more it has been accused of unseemly behavior, as if acknowledging and moving closer toward the position of another party is an abhorrent thing to be avoided at all costs. Perhaps most disturbing of all, the Staff has even cited some of the very Program revisions that the Staff itself suggested, such as the addition of an "extenuating circumstances" exception to removing customers off of the Program, as fodder for arguing why the Program is flawed and should be rejected. Indeed, Staff's single minded desire to kill the Program with whatever asserted legal imperfections and policy concerns it can conjure up has placed the Commission in the position of rejecting a critically-needed Program based on an absurdly narrow and anemic view of its own regulatory authority – a view that is wholly inconsistent with the Commission's previous approval of both low-income and gas cost incentive programs.

10. And now that all is said and done, it is obvious that the Staff has no real interest in implementing any kind of meaningful low-income program in the foreseeable

future or at least one that the Company has any input in bringing forward. Indeed, it is clear from page 4 of Staff's response, that Staff believes the *only* place to implement an experiment is in the context of a general rate case proceeding, which means that nothing will happen for low income customers for another two years at the earliest. Moreover, if and when such a program was finally implemented, it is equally clear that Staff will want to see the program limited, at least for the first few years, to a mere percent or two of the nearly 100,000 customers of Laclede who live at or below the federal poverty level. In short, absent a Commission decision to grant the Company's Motion for Reconsideration, it will be years before any meaningful assistance of any kind is provided to Laclede's most vulnerable customers.

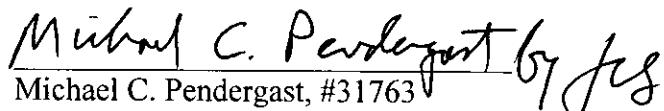
Response to Public Counsel

11. Since Public Counsel has essentially raised, albeit in a more summary and far less contentious manner, the same arguments that were set forth in Staff's Response, there is no need to belabor the record with an extended response to those arguments. The Company would note, however, that Public Counsel has been far more open than Staff to implementing a Program that could have a meaningful impact on low-income customers, as evidenced by Public Counsel's acknowledgement that it did indeed propose the \$3 million funding level as an alternative in the event the Commission determined that a Program could and should be implemented. (Public Counsel's Response, p. 1). Nevertheless, Public Counsel also suggests that actual implementation of any program should await the Company's next general rate case proceeding -- a result that would likewise delay for years into the future the provision of energy assistance. Moreover, it

would effectuate such a delay at time when some social service agencies have already run out of money to distribute to those in need.

12. This does not have to happen. For the reasons discussed herein, and in its Motion for Reconsideration and Brief, the Commission has all the legal authority and record evidence it needs to conclude that the Program should be approved at the reduced funding level. For an amount that, at most, would total a penny a day for the typical residential customer, the Commission can implement an experimental Program that will provide critically needed assistance now under terms that fall squarely within the ambit of other experimental programs previously approved by the Commission. Laclede would respectfully submit that there is no good reason for the Commission to reject this final opportunity to do what needs to be done and what should be done.

Respectfully Submitted,

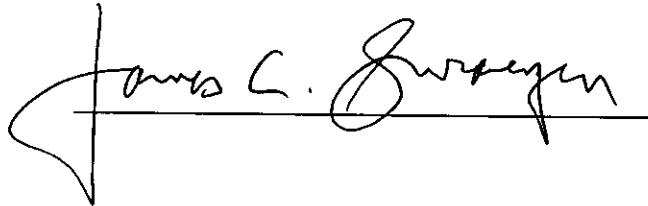
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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Reply was served on all parties of record to this proceeding on this 3RD day of February, 2003 by hand-delivery or by placing a copy of such Reply, postage prepaid, in the United States mail.

A handwritten signature in cursive script, reading "James C. Swearingen", is written over a horizontal line. The signature is written in black ink.