LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION
312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 635-0427

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR

DEAN L. COOPER
MARK G. ANDERSON
GREGORY C. MITCHELL
BRIAN T. MCCARTNEY
DIANA C. FARR
JANET E. WHEELER

OF COUNSEL
RICHARD T. CIOTTONE

January 23, 2003

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

FILED[3]
JAN 23 2003
Missouri Public
Service Commission

Re: Case No. GT-2003-0117

Dear Mr. Roberts:

Enclosed for filing with the Missouri Public Service Commission in the referenced case on behalf of Laclede Gas Company please find an original and eight (8) copies of a Motion for Reconsideration of January 16, 2003 Report and Order Based on a Reduced Funding Level, Motion for Expedited Treatment, or, Alternatively, Application for Rehearing.

Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

A copy of this filing is being provided to all parties.

I thank you in advance for your cooperation in this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By: Sondra B. Morgan

Sondra B. Morgan

SBM/lar
Enclosure
cc: Dan Joyce
John Coffman
Ronald Molteni

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

MOTION FOR RECONSIDERATION OF JANUARY 16, 2003 REPORT AND ORDER BASED ON A REDUCED FUNDING LEVEL, MOTION FOR EXPEDITED TREATMENT, OR, ALTERNATIVELY, APPLICATION FOR REHEARING

COMES NOW Laclede Gas Company ("Laclede" or "Company") and, pursuant to §386.500 RSMo. 2000 and Rules 4 CSR 240-2.080(16) and 4 CSR 240-2.160 of the Commission's Rules of Practice and Procedure, submits its Motion for Reconsideration of the Commission's January 16, 2003 Report and Order Based on a Reduced Funding Level, Motion for Expedited Treatment, or, Alternatively, Application for Rehearing in the above-referenced case. With this pleading, Laclede requests that the Commission reconsider its decision in this case in order to permit Laclede to provide its most vulnerable customers with a substantially reduced but still meaningful level of energy assistance this winter. Specifically, Laclede requests that it be permitted to implement, on an experimental basis, its Catch-Up/Keep-Up Program at the approximately $3 million funding level that was suggested as an alternative by the Office of the Public Counsel to the $6 million funding level originally proposed by the Company.[1]

[1] Laclede does not believe that there is any legal barrier to the Commission granting the relief sought in this Motion for Reconsideration or, alternatively Application for Rehearing given its broad power to adopt the kind of limited experimental program that is the subject of the Company's request. See ***In the matter of the investigation into all issues concerning the provision of extended area service (EAS) in the State of Missouri under Commission Rule 4 CSR 240-30.030***, 29 Mo. P.S.C.(N.S.) 75, 106 (1987), *citing*, ***State ex rel. Watts Engineering Company v. Missouri Public Service Commission,*** 191 S.W. 412 (Mo. banc 1917); ***State ex rel. Washington University v. Missouri Public Service Commission,*** 272 S.W. 971 (Mo. banc 1925); ***State ex rel. City of St. Louis v. Missouri Public Service Commission,*** 296 S.W. 790 (Mo. banc 1927); ***State ex rel. Campbell Iron Company v. Missouri Public Service Commission,*** 296 S.W. 998 (Mo. banc 1927); ***State ex rel. McKittrick v. Missouri Public Service Commission,*** 175 S.W.2d 857 (Mo. banc

As discussed below, this critically needed assistance would, with the Commission's concurrence, be provided to Laclede's low-income customers without any corresponding adjustments to the rates of non-participating customers until next November and at a maximum "impact" of about a penny per day for the typical residential customer -- a result that should alleviate the Commission's concern regarding the impact of the program on non-participating customers. Moreover, with a significantly reduced funding level, such an approach should also alleviate the Commission's concern over whether Laclede will receive some inappropriate financial benefit between rate cases. In further support of its Motion, Laclede respectfully states as follows:

1. On January 16, 2003, the Commission issued its Report and Order in the above-captioned case (hereinafter the "Report and Order") relating to the experimental Catch-Up/Keep-Up Program that Laclede had proposed to assist its most vulnerable customers in restoring and maintaining their utility service. In its Report and Order, the Commission properly found "that there is a need for additional energy assistance for low-income customers." (Report and Order, p. 5).[2] The Commission also determined

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1943); and ***State ex rel. Laclede Gas Company v. Missouri Public Service Commission,*** 535 S.W.2d 561 (Mo.App. K.C.D. 1976). The Commission has previously used that discretion to approve other programs that contain elements similar or identical to those contained in the program under consideration in this case. These include both programs that provide grants or credits to low-income customers for purposes of making service more affordable or weatherizing their homes, *see* ***Re: Laclede Gas Company***, Case No. GR-2001-629 (2001); ***Re: Missouri Gas Energy,*** Case No. GR-96-285 (1997); ***Re: Union Electric Company,*** Case No. GR-2000-512 (2000), ***Re: Missouri Gas Energy,*** Case No. GR-2001-292 (2001) and programs that have permitted the savings achieved by gas utilities to be retained or used for other purposes rather than flowed through the PGA. (***Re: Laclede Gas Company***, Case No. GR-96-193 (1996); ***Re: Missouri Gas Energy,*** Case No. G0-2000-705 (2000); ***Re: Union Electric Company,*** Case No. GT-2001-635 (2001)). By structuring the program as experimental, i.e. by limiting both its term and now further limiting its magnitude, the Company has brought the program squarely within this broad range of Commission discretion.

[2] In Laclede's view, such a finding is undeniable given the serious and growing gulf that the evidence in this case showed has opened between the need for such assistance and the level of public and private resources available to meet it. (Exh. 1, pp. 14-16). Unfortunately, that gulf has only widened in recent days as colder weather and rising wholesale gas prices have combined to place an even greater burden on low-income customers.

that the core concept underlying the program that Laclede had proposed to address this need – namely, a method for allowing customers to reduce their arrearages – was a concept "worthy of further review." (Report and Order, p. 13). Despite these findings, however, the Commission nevertheless determined, on a 3 to 2 vote, that the Catch-Up/Keep-Up Program, as proposed by Laclede, should be rejected.

2. As a result of the Commission's action, natural gas customers in Missouri's largest metropolitan area now face the prospect that they will have no additional resources, either this winter or for the foreseeable future, to address the critical need identified by the Commission in its Report and Order. In fact, given the corresponding absence of a low-income payment program in Kansas City, the Commission's action leaves Missouri in the inexplicable position of offering such resources to customers in only one place -- i.e., those served by Missouri Gas Energy in Joplin, Missouri.

3. Laclede would respectfully submit that such a result is untenable given the urgent need that exists for at least some level of additional energy assistance this winter. Such a result is also completely unnecessary in that there is a simple revision to the program that has already been submitted on the record during the evidentiary hearing in this case and that, if implemented, would easily remedy the reasons given by the Commission for rejecting the program that would have provided such assistance.

Motion for Reconsideration Based On Reduced Funding Level or, Alternatively, Application for Rehearing

4. To that end, Laclede requests that the Commission reconsider its decision so as to permit the program, as revised during the course of this proceeding, to be implemented at the significantly reduced funding level that was suggested in the testimony filed by the Office of the Public Counsel in this case (i.e., $3 million, plus a potential adder for certain third party administrative costs; *See* Exh. 4, pp. 10-11).[3] Although Laclede continues to believe that its proposed higher funding level is necessary to address the need that exists today, the Company believes that this alternative funding amount would provide meaningful help to its customers while valuable information is gathered.

5. At the same time, such a reduction in the funding level would address and, in Laclede's view, remedy the vast majority of the concerns that were raised in the majority's decision as a basis for rejecting the Catch-Up/Keep-Up Program as it was proposed by Laclede. Importantly, such a reduction would go a long way toward alleviating the Commission's concern regarding the potential impact of the program on non-participating customers. (*See* Report and Order, pp.7-8). Even if, contrary to what was indicated by the record in this case and the experience with such programs in other jurisdictions, the program ends up having no positive impact on the bad debt, disconnection and related costs that are typically borne by other customers, it would still cost the typical residential customer no more than 31 cents per month, ***or less than the***

[3] If desired by the Commission, Laclede would also be willing to permit customers to join the program by paying their current bill or their average levelized bill, whichever is lower, since such an approach would not penalize customers who join the program for the first time in the spring or summer when a current bill is likely to be lower than a levelized bill amount.

cost of a first-class postage stamp.[4] By anyone's reckoning, it is difficult to characterize a potential penny-a-day impact as something so significant that it should stand in the way of a program that can impact in a very real way the ability of thousands of customers to restore or maintain their service.

6. Similarly, this reduction in program funding should also alleviate any concern the Commission may have had regarding whether Laclede would be receiving some untoward financial benefit from the program in between rate cases. It should be noted that under the Company's original proposal to fund the program at $6 million, it was estimated that Laclede would experience a temporary financial benefit of no more than $2 to $3 million, ***less*** whatever impact the program had on costs that would otherwise be recovered through operation of the Company's Emergency Cold Weather Rule tracking mechanism. (Exh. 2, p. 4; Tr. 202). These limited financial benefits, however, would be reduced -- and reduced substantially -- in the event program funding were to be cut in half. Additional increases in the cost of providing service to low-income customers as a result of recent upward movements in wholesale gas prices and weather-driven increases in customer usage will also offset any potential benefit. Indeed, the undisputed evidence on the record indicates that before the winter heating season even began, the amount of bad debt expense being incurred by the Company was already more than $3 million dollars in excess of the amounts that had been included for bad debts as a result of the Company's most recent rate case proceeding. (***Compare*** the $11.3 million in annual bad expense actually incurred by the Company as of September 30,

[4] Moreover, given the delay in having the program approved, even this modest cost would not be reflected in rates until the Company's next November ACA filing. As a result, implementation of the proposal would permit the Company's must vulnerable customers to start receiving some form of assistance now while ensuring no change in the rates for other, non-participating customers until the fall.

2002 with the approximate $8 million allowance for bad debts included in rates. (Exh. 2, p. 6)). In view of this historical experience and the prospective impact of rising wholesale prices and increased usage on the Company's bad debts, it defies reality to suggest that Laclede will receive any material or inappropriate financial benefit from the program at the substantially reduced funding level suggested herein.[5]

7. Such a reduction in program funding would also alleviate the Commission's apparent concern, as set forth at page 8 of its Report and Order, that the amounts collected from customers might significantly exceed the cost of the program and that such excess would continue to accumulate until the program is terminated. To the contrary, since any rate adjustment necessary to fund the program would not be made until well after the Company begins providing grants to its low-income customers (i.e., not until next November), it is almost certain that the Company will be ***undercollecting*** the cost of the program throughout much of its limited duration.

8. The reduction in program funding would also reduce, from approximately 30% to 15%, the percentage of pipeline discounts being used to fund the program. This should, in turn, eliminate any remaining concerns the Commission may have had regarding any potential legal requirement under ***Midwest Gas Users' Assn,*** *supra,* at 481-

[5] These same considerations should also ease the Commission's expressed concern that the use of pipeline discounts to fund assistance to low-income customers somehow constitutes a potentially unlawful recovery of bad debts through the PGA clause. In any event, as Commissioner Murray pointed out in her dissent, Laclede's redirection of a share of discount savings to help fund a low-income program does not constitute an attempt, let alone an unlawful one, to recover bad debt expense through the PGA simply because one of its potential indirect effects would be to reduce bad debts. Indeed, such reasoning is tantamount to arguing that all of the gas cost incentive mechanisms ever approved by the Commission were unlawful because, by allowing utilities to profit from such savings, they permitted an impermissible recovery of dividend costs or earnings through the PGA -- a view that has already been rejected by Missouri courts. ***State ex rel. Midwest Gas Users' Assn. v. Public Service Comm'n***, 976 S.W.2d 470 (Mo. App. 1998). Indeed, such a characterization is particularly inappropriate because it suggests that gas cost incentive mechanisms can be lawful so long as any amounts retained under them only benefit the utility's bottom line and are not used to benefit the utility's customers, including its most vulnerable customers. Laclede would submit that such a view is impossible to square with either the law or with sound public policy considerations.

482, to establish some benchmark or baseline for such discounts. Notably, this reduced percentage falls squarely between the 10% to 20% of pipeline discounts that Laclede was authorized to retain under the pipeline discount component of its original Gas Supply Incentive Plan -- a component that did not contain *any* benchmark or baseline other than what the Company had proposed in this case, namely, the FERC maximum rate. (Tr. 809; ***See also Re: Laclede Gas Company,*** 5 Mo.P.S.C.3d 108, 112-114, Case No. GR-96-193 (1996)).

9. Such a percentage is also substantially below the retention percentages that have been authorized by this Commission for numerous other gas cost incentive mechanisms applicable to Laclede and other utilities -- mechanisms that, as Commission Staff witness David Sommerer confirmed in this case, also included no baselines or benchmarks.[6] Indeed, the very gas cost incentive mechanism that the Court determined was lawful in ***Midwest Gas Users' Assn,*** *supra,* also contained an incentive component relating to capacity release revenues that had no historical baseline or benchmark, but instead permitted MGE to retain a share of ***all*** revenues generated under that component beginning with dollar one. ***See Re: Missouri Gas Energy,*** 5 Mo.P.S.C.3d 132 (1996). Given these considerations, it is difficult to understand how the Commission could have perceived ***any*** requirement in the law to establish a baseline or benchmark as a precondition for approving a gas cost incentive mechanism. Nevertheless, by reducing program funding to less than 15% of the discounts currently being achieved by the Company, the approach suggested herein would bring this program even more squarely into the ambit of what the Commission and the courts have previously approved.

10. Finally, the reduced funding level should also eliminate most, if not all, of the concerns expressed by the Commission regarding certain design features of the program. As the Commission itself recognized at page 15 of its Report and Order, the Commission has already "authorized an experimental pilot program for MGE that is similar to Laclede's proposal." In fact, according to the point by point comparison made by the Commission's Staff's own witness, the vast majority of the design features of Laclede's program, as modified during the course of this proceeding, are in fact either identical to or, in some cases, better designed, to protect the interests of non-participating customers than those contained in the MGE program which Staff supports. For example, Staff witness Imhoff readily agreed:

- that just like the MGE program, the Catch-Up/Keep-Up Program requires that participating customers go on a levelized payment plan and that, in his opinion, this was an appropriate feature of the program proposed by Laclede (Tr. 652-653);
- that just like the MGE program, the Catch-Up/Keep-Up Program requires that participating customers stay current on their bills in order to receive financial assistance under the program and that, in his opinion, this was an appropriate feature of the program proposed by Laclede (Tr. 653);
- that just like the MGE program, the Catch-Up/Keep-Up Program requires that participating customers apply for energy assistance from governmental sources for which they may be eligible and that, in his

[6] The gas cost incentive mechanisms that have been approved by the Commission with no benchmarks or baselines, include, among others, ones applicable to pipeline discounts, off-system sales and capacity release revenues. (Tr. at 809-810).

opinion, this was an appropriate feature of the program proposed by Laclede (Tr. 654-55);

- that just like the MGE program, the Catch-Up/Keep-Up Program permits customers who have failed to keep current on their bills to be reinstated to the Program under certain circumstances and that, in his opinion, the terms of the Catch-Up/Keep-Up tariff are just as specific as to when this may occur as are the terms of the MGE program tariff (Tr. 656-658) -- a consideration that is directly responsive to the Commission's criticism at page 6 of its Report and Order that this feature of the Laclede program is too vague;
- that compared to the MGE program, the Catch-Up/Keep-Up Program actually does a more precise, accurate and overall better job of addressing Staff's concern (and apparently the Commission's concern as stated at page 8 of its Report and Order) that any unused program funds should go back to the general body of ratepayers in that it has specific provisions mandating that such funds be flowed through to customers upon termination of the program while the MGE program specifies that any unused funds will go instead to the MidAmerican Assistance Coalition, a low-income assistance agency (Tr. 659-662);
- that compared to the MGE program, the Catch-Up/Keep-Up Program, as revised to incorporate the record-keeping requirements proposed by Public Counsel (*see* Exhibit 13, p. 28-j), actually has more specifics on the kind

of information and data that must be maintained by Laclede to evaluate the program (Tr. 663-665).

11. In addition to confirming the appropriateness, and even superiority, of the various features of the Catch-Up/Keep-Up Program, Mr. Imhoff's comparison of the MGE and Laclede programs also illustrated the lack of substance underlying a number of the concerns raised in the Commission's Report and Order. For example, at page 8 of its Report and Order, the Commission states that firm sales customers may be harmed by the program because firm transportation customers would not be required to pay for the program even though they might receive some benefit from it. Mr. Imhoff acknowledged during cross-examination, however, that the surcharge used to fund the MGE low-income program applies *only* to residential customers. (Tr. 666-667). In other words, the MGE low-income program spreads out the "cost" of the program over even fewer customers than Laclede's program. Needless to say, it is difficult to reconcile the Commission's approval of this residential-only funding concept in the MGE case with its criticism of Laclede's proposal in this case.

12. The Commission also expressed the concern at page 7 of its Report and Order that because the program "raises rates by $6 million, it could harm those customers who just barely manage to pay their bills, but have not yet fallen into an arrearage situation." While Laclede believes that a sharply reduced funding level already addresses this concern by limiting the potential impact of the program to about 31 cents per month, it should nevertheless be noted that the funding surcharge for the MGE low-income program is also applied to all customers, including low-income customers. (Tr. 665-666).

13. Finally, it is important to recognize that because this is an experiment, it is unreasonable to expect that it can be preceded by the kind of definitive estimates of its potential success that the Commission states should be provided at page 7 of its Report and Order. Indeed, that is precisely why the experiment must be undertaken. Based on the foregoing, however, it is clear that this program, particularly in comparison to those previously approved by the Commission, is well designed and should, at a minimum, be approved at the reduced funding level suggested by Public Counsel in this proceeding.

14. In view of all of these considerations, Laclede believes that the Commission should grant its requested reconsideration by issuing an Order stating that while in its view the Company's program, as proposed, was unacceptable, that Public Counsel's suggested alternative funding level may nevertheless be implemented pending completion of a collaborative effort to consider other potential alternatives. Such a reconsideration would permit the Company's most vulnerable customers to receive help immediately without any change in the rates to be paid by other customers this winter, spring or summer. It would also provide an opportunity to see whether there is any merit to the Commission's stated concern that low-income customers will not be able to change their behavior if the right incentives are offered. Yes, the success of the program does depend, in part, on such behavioral changes. The experiences of other jurisdictions, as well as the record in this case, however, indicate that the Commission may be seriously underestimating the ability of financially challenged individuals to respond constructively to a helping hand. For all of these reasons, the Commission should reconsider its decision consistent with the recommendations set forth herein.

15. Absent such action, the Commission's decision is, for the reasons previously stated, clearly unlawful, arbitrary and capricious, unsupported by adequate findings of fact as required by §§386.420 and 536.090, and unreasonable in that it is contrary to the competent and substantial and, in many cases, undisputed evidence on the record and rehearing should accordingly be granted by the Commission.

Motion for Expedited Treatment

16. Consistent with the facts presented in this pleading regarding the urgent need for additional energy assistance for low-income customers, Laclede seeks expedited treatment of its request. With roughly half of the winter season still before them, low-income customers are under heavy pressure. This winter season has thus far been significantly colder than the previous winter. Thus, even with Laclede's weather mitigation rate design strictly limiting the recovery of non-gas costs, this winter's gas bills have thus far been higher than last year's bills. Further, gas prices began to escalate in early fall. Although Laclede was able to hold the price of gas in check through its November PGA filing, effective January 15, 2003, customers were finally confronted with a portion of these well-head price increases, although a mitigated one due to the Company's price risk management efforts. This disturbing combination of events creates an urgency for low-income assistance that is even more acute than was the case at the winter's onset.

17. Laclede accordingly requests that the Commission act expeditiously by responding to this request by January 31, 2003, or as soon thereafter as practicable. Low-income customers who are currently struggling with the requirement to service both current bills and arrearages need the relief offered by the Catch-Up/Keep-Up Program.

Hence, the sooner the Commission acts on this request, the less customers will be harmed by the inability of some to pay their gas bills. In support of this motion for expedited treatment, Laclede further states that this pleading was filed as soon as it could have been following the Commission's issuance of its Report and Order rejecting Laclede's tariff.

WHEREFORE, for the foregoing reasons, Laclede Gas Company respectfully requests that the Commission grant its Motion for Reconsideration and Motion for Expedited Treatment, or, Alternatively, Application for Rehearing.

Respectfully Submitted,

Michael C. Pendergast by Sandra Morgan

Michael C. Pendergast, #31763
Vice President & Associate General Counsel
Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101
Telephone: (314) 342-0532
Facsimile: (314) 421-1979
E-mail: mpendergast@lacledegas.com

Rick Zucker, #49211
Assistant General Counsel-Regulatory
Laclede Gas Company
720 Olive Street, Room 1524
St. Louis, MO 63101
Telephone: (314) 342-0533
Facsimile: (314) 421-1979
E-mail: rzucker@lacledegas.com

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Motion for Reconsideration, Motion for Expedited Treatment, or, Alternatively, Application for Rehearing was served on all parties of record to this case on this 23rd day of January, 2003 by hand-delivery or by placing a copy of such Motion, postage prepaid, in the United States mail.

Sandra B. Morgan