

LACLEDE GAS COMPANY
720 OLIVE STREET
ST. LOUIS, MISSOURI 63101

Area Code 314
342-0513

GERALD T. McNEIVE, JR.
Associate General Counsel

January 28, 1991

Mr. Brent Stewart
Executive Secretary
Missouri Public Service Commission
301 West High Street
Jefferson City, Missouri 65101

FILED
JAN 28 1991
PUBLIC SERVICE COMMISSION

Re: Case No. EO-91-251

Dear Mr. Stewart:

Enclosed herewith please find the original and fourteen copies of the Application of Laclede Gas Company for Leave to Intervene; Motion to Dismiss the Application of Union Electric Company for Variance from Promotional Practices Rule for Good Cause Shown and for Approval of Promotional Practices Sheets; and Alternative Request for Hearing for filing in the above referenced case.

Please date-stamp the additional copy of such filing provided herewith and return the same in the pre-addressed stamped envelope provided.

Thank you for your assistance.

Very truly yours,


Gerald T. McNeive, Jr.

GTM:sll
Enclosures
cc: Michael F. Barnes
Mary Ann Young
Lewis R. Mills

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Application of Union Electric)
Company for Variance from)
Promotional Practices Rule for) Case No. EO-91-251
Good Cause Shown and for Approval)
of Promotional Practices Sheets.)

APPLICATION OF LACLEDE GAS COMPANY FOR LEAVE TO
INTERVENE; MOTION TO DISMISS THE APPLICATION OF
UNION ELECTRIC COMPANY FOR VARIANCE FROM PROMOTIONAL
PRACTICES RULE FOR GOOD CAUSE SHOWN AND FOR
APPROVAL OF PROMOTIONAL PRACTICES SHEETS; AND
ALTERNATIVE REQUEST FOR HEARING

Comes now Laclede Gas Company, by its counsel, pursuant to the Commission's Rules of Practice and Procedure, 4 CSR 240-2.110(11) et seq. and for its Application for Leave to Intervene; Motion to Dismiss the Application of Union Electric Company for Variance from Promotional Practices Rule for Good Cause Shown and for Approval of Promotional Practices Sheets; and Alternative Request for Hearing; states to the Commission that:

1. The exact legal name of the Applicant is Laclede Gas Company ("Laclede"), and its principal place of business is located at 720 Olive Street, St. Louis, Missouri 63101.

2. The names, titles and addresses of the persons to whom correspondence, communications, orders and decisions of the Commission are to be sent are as follows:

Mr. Robert C. Jaudes
President
Laclede Gas Company
720 Olive St.
St. Louis, MO 63101

FILED

JAN 28 1991

PUBLIC SERVICE COMMISSION

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X

Mr. Donald L. Godiner
Laclede Gas Company
720 Olive St.
St. Louis, MO 63101

Mr. Gerald T. McNeive, Jr.
Laclede Gas Company
720 Olive St.
St. Louis, MO 63101

3. Laclede is a Missouri domiciled public utility subject to the Commission's jurisdiction supplying gas service as a retail distributor in the City of St. Louis, St. Louis County and seven other counties in eastern Missouri. Most of Laclede's gas customers are also electric customers of Union Electric Company ("UE"), a supplier of electric energy in eastern Missouri. Moreover, Laclede and UE compete for space heating customers as well as for other customer energy uses in their common service areas.

4. On January 14, 1991, UE filed with the Commission an Application for Variance from Promotional Practices Rule for Good Cause Shown and for Approval of Promotional Practices Sheets (said Application, the accompanying Affidavit and the attached proposed tariff sheets being hereinafter called the "Application"). The Application seeks a variance from the Promotional Practice prohibitions contained in Commission Rule 4 CSR 240-14.010 et seq. ("Rules") to permit UE to offer, as a

purported pilot program, a "Satisfaction Guarantee" Program ("Program").1/

The Program's stated purpose is "to increase the number of heat pump sales."2/ If a customer who purchases such a heat pump is dissatisfied, the "Guarantee" would provide that UE and its dealer will either resolve the customer's dissatisfaction with the heat pump, or failing to do so, UE will "convert the heat pump system to a standard air conditioner/furnace." The Program will terminate on the earlier of the expenditure of the \$7,500 budgeted for the Program (excluding the cost of planned heat pump promotion), or the expiration of twelve months after Commission approval.3/

The Application seeks an expedited review and suggests that no hearing is necessary based upon the contents of the Affidavit of John J. Herron.

5. A review of the proposed UE Program on its face clearly reveals that in all material respects this proposed Program is not supported by the "good cause" required for a variance from the Rules. To the contrary, the Program's purported benefits to UE customers are for the most part

1/ The Program proposed violates the prohibitions of 4 CSR 240-14.020 in that, among other things, subsection (4) thereof prohibits consideration for the sale, installation or use of equipment; and subsection (6) prohibits free modification of appliances or equipment.

2/ Application, paragraph 4.b.

3/ Id., paragraph 4.d.

actually "negatives," and its obvious harmful consequences to Laclede and its customers are simply ignored by UE.

For example, the very UE air conditioning replacement customers that this Program purports to be the direct beneficiaries of the Program will actually receive less efficient air conditioning equipment, than would otherwise be available to them for the same cost if they did not participate in the Program. Consequently, they will receive a lesser reduction, if any, in such participants' summer electric bills, than will non-participants who elect to spend the same amount to purchase a high efficiency air conditioner, rather than a heat pump of lesser efficiency. Similarly, UE and its customers will receive a smaller reduction, if any, in UE's summer peak if these less efficient heat pumps are purchased in lieu of higher efficiency air conditioners. In addition, dissatisfied participants will apparently be required by the Program to accept "satisfaction" in the form of a disabled heat pump, rather than conversion to a higher efficiency air conditioner and a standard furnace.^{4/} Moreover, this Program is clearly designed to promote an increased reliance upon electric energy with its inherently inefficient generation process, and a decreased usage of more efficient natural gas energy. The Program

^{4/} The Application does not define the term "standard furnace" and it remains unclear whether that means a gas furnace, an electric furnace or other type furnace.

promotes a change to less efficient resource utilization, which is detrimental to all customers.

Furthermore, all else being equal, an increase in the number of heat pumps sold in Laclede's service area, a result which is the avowed "purpose" of this "guarantee" Program, will, on the one hand, undoubtedly attain the stated objective of increasing UE's sales and earnings. On the other hand, such sales will likewise decrease Laclede's space heating sales and earnings, and lead to substantial increases in low load factor, high peak gas usage, a result clearly to the material detriment of Laclede and all of its customers, and a result completely ignored by the Application.

These purported Program "benefits," as well as its unmentioned, harmful "consequences" and related matters, are discussed in greater detail below.

- A. THE PROGRAM WILL RESULT IN THE REPLACEMENT OF OLD AIR CONDITIONERS WITH MORE EXPENSIVE BUT LESS EFFICIENT AIR CONDITIONING SYSTEMS THAN OTHERWISE AVAILABLE TO PROGRAM PARTICIPANTS AT THE SAME COST.

If UE was as centrally concerned about reducing its summer peak as the Application claims, it would not have proposed this Program. This Program will result in the replacement of old air conditioners with more expensive, but less efficient, air conditioning systems than the participants could have purchased if they had devoted the same amount of capital to new air conditioning alone. For example, a customer who replaces an

old air conditioner with a heat pump of 10 SEERS/ could replace that old air conditioner with an air conditioner with the higher efficiency of 12 SEER for less cost. In short, by purchasing the more expensive heat pump, the participant obtains less air conditioning efficiency than such customer could have by spending the same money on a more efficient air conditioning unit. Thus, UE's proposed "guarantee" is actually designed to entice UE customers into buying less efficient air conditioning replacements than they would otherwise buy absent the incentive. As a result, a participant in such Program will experience a lesser reduction in his or her bills for electric air conditioning, than if they had not participated, but instead chose to purchase a more efficient air conditioner replacement for the same amount of money. Moreover, all UE customers will be disadvantaged by this effect of the Program, since more efficient air conditioner replacements will clearly

5/ SEER stands for "Seasonal Energy Efficiency Ratio." SEER means the total cooling of a central unitary air conditioner or unitary heat pump in Btu's during its normal annual usage period for cooling, divided by the total electric energy input in watt-hours during the same period.

diminish UE's summer peak to a greater extent than less efficient, but equivalently priced, heat pumps.6/

Furthermore, the purported benefit of summer peak load cuts specifically attributable to this Program by the UE calculation of demand savings7/ is spurious and misleading in that an air conditioner with an EER of 6.5, as postulated by UE in its calculation, when replaced, will be replaced by an air conditioner of 10 EER or higher efficiency, without any assistance by this Program. Air conditioners with 6.5 EER ratings are no longer being manufactured and thus are not available as replacements. In fact, the minimum efficiency allowable by federal law8/ commencing January 1, 1992 for split system central air conditioners is an EER rating of 10. Moreover, the true measure of potential savings is not, as UE claims, the difference between 6.5 EER and 10 EER; but instead the difference between the efficiency rating of air conditioners currently being used to replace old air conditioners and

6/ In this regard, it should be noted that according to a customer survey conducted by the Kansas City Power and Light Company ("KCP&L") in conjunction with Case No. EO-90-251, also involving a proposed variance from the Rules by an electric utility, 61% of KCP&L customers surveyed who were paid incentives to purchase air conditioning replacement equipment with SEERs of 11 or higher reported that they would have chosen to purchase a replacement air conditioner of 11 SEER or higher, whether or not being offered an incentive by the electric company. Thus, customers are willing to purchase high efficiency air conditioners without incentives.

7/ Exhibit No. 1 to Affidavit of John J. Herron.

8/ 42 U.S.C.A. 6295(d)(1).

the efficiency rating of current heat pumps. If the efficiency rating of air conditioners replacing old air conditioners is 11 EER, and a customer replaces such an old air conditioner with a heat pump of 10 EER, as UE's calculation suggests, then summer demand savings have been lost rather than gained by his Program.

In short, contrary to UE's claims, this Program in a real sense may reduce, rather than enhance, summer peak reduction, and falls far short of the "good cause" justification necessary to obtain a variance from the Rules.

B. THE PROGRAM'S "SATISFACTION GUARANTEE" IS MISLEADING, AND WILL LEAVE DISSATISFIED PARTICIPANTS WITH NOTHING MORE THAN AN EXPENSIVE, DISABLED HEAT PUMP OPERATING AS A RELATIVELY INEFFICIENT AIR CONDITIONER.

The Program's "Guarantee" seems to promise much more than it will actually deliver, and will mislead both UE and Laclede customers. A program that offers a "Satisfaction Guarantee" is expected by the public to ensure complete customer satisfaction with the equipment operating in its normal and intended manner. However, the ultimate form of relief offered by UE's Guarantee (as described in its Application), is UE's conversion of the installation by simply disabling the heat pump reversing valve, and leaving the customer, after paying the premium price for a heat pump, with only a relatively low efficiency air conditioner and his or her prior furnace.^{9/} Thus, for example,

^{9/} Affidavit of John J. Herron accompanying Application, page 2.

after investing significantly more than was necessary to obtain an air conditioner of 10 SEER, the UE customer who participated in the Program is left with a disabled heat pump functioning as an 10 SEER air conditioner. Such a result clearly does not in reality guarantee a customer's satisfaction, and the use of the phrase "satisfaction guarantee" in this context is highly misleading.

The proposed UE Program is obviously less concerned with actually guaranteeing substantive customer satisfaction with the heat pump than it is with using the existence of a Commission approved "Satisfaction Guarantee" Program to increase the promotion and the sale of heat pumps, an objective which clearly appears from the face of the Application.^{10/}

While the Program's "Guarantee" fails to restore the dissatisfied participant's dollar outlay for what proved to be disabled equipment, the Program's approval by the Commission would provide UE with a valuable media tool. In this regard, the Application omits quantifying the amount UE currently plans to spend for heat pump promotion in conjunction with the proposed "Satisfaction Guarantee" Program. A misleading "Guarantee" promoted by a heat pump advertising budget which, while not disclosed by UE, may number in the hundreds of thousands of dollars, necessarily creates a condition ripe for

^{10/} Application, paragraph 6.2, "UE would like to begin active promotion of the pilot program" (emphasis supplied).

market manipulation as well as customer misinformation and dissatisfaction.

As demonstrated above, the Program's "Guarantee" is in fact no guarantee at all of customer satisfaction. It will likely result in well-intentioned customers being forced to choose between: (a) using a heat pump with which the customer is dissatisfied; or (b) disabling the heat pump and writing off their expenditure over and above the cost of an air conditioner with an equivalent or higher SEER rating. A Program which presents those choices as its ultimate "guarantee" is one which the Commission should summarily reject, as failing to meet the "good cause" variance standard of the Rule.

- C. THE PROPOSED HEAT PUMP PROMOTION ENCOURAGES THE USE OF LESS EFFICIENT ELECTRIC ENERGY AT THE EXPENSE OF MORE EFFICIENT NATURAL GAS ENERGY.

UE's Application also sets forth as proposed "good cause" the unsubstantiated assertion that customers who participate in the Program will benefit through savings on heating and cooling costs due to the purported increased efficiency inherent in the use of a heat pump system.^{11/} Of course, this unsupported conclusionary claim, among other things, totally ignores the fact that when consideration is given to the loss of energy that occurs in generating electricity due to the burning of other fuels, greater energy consumption is required to heat with electricity than to heat with natural gas. The proposed

^{11/} Application, paragraph 5.c.1; Affidavit, page 3.

Program completely overlooks the real measure of efficiency in its apparent rush to promote UE's sale of heat pumps, and instead relies on a perfunctory and erroneous conclusion unaccompanied by any evidentiary support. Surely, such a paltry effort in this regard cannot be accepted by this Commission as the proof of the "good cause" required for variances from the Rule.

D. THE PROGRAM'S PURPOSE IS TO INCREASE THE SALE OF ELECTRIC HEAT PUMPS TO THE DETRIMENT OF LACLEDE AND ITS CUSTOMERS.

UE's Application recites a litany of alleged, assorted and totally unsupported "benefits" which UE and its customers will derive from the proposed Program. UE claims that savings, efficiency, summer peak reduction, load curve flattening and even greater cleanliness and safety will inure to society if this Program is approved.^{12/} Whether these barren conclusions will ever spring to life is at best speculative, for certainly no real evidence has been presented in UE's Application which could support a "good cause" finding. But the realization of these hoped for benefits conjured up by UE is not the real

^{12/} Application, paragraph 5.c.1 and 2. Even the "pilot" and short term nature of the Program are claimed by UE as "good cause" for the variance's approval. The fact that UE seeks to begin its Program on a "limited" basis does not clothe that Program in propriety, particularly when UE admits that if the Program sells more heat pumps, UE will seek to make it permanent. (Application, paragraph 5.5). However, even if the Program is terminated after a year, any heat pumps sold, to the extent they continue to function beyond the Program's term, will continue to cause negative consequences.

purpose of this Application. That purpose, as candidly stated by UE, is simply to "increase the number of heat pump sales"

If more heat pumps are sold, the clear-cut beneficiary is UE, which by its own admission, will have increased earnings. Where will these increased earnings come from? From space heating revenues previously received by Laclede, UE's chief competitor for space heating sales. Laclede's shareholders and Laclede's customers (most of which are UE's customers as well) will be the source of UE's increased earnings. If Laclede's revenues decrease and its costs do not, then its customers will be required at some point to cover the shortfall. Moreover, the adverse impacts on Laclede, and its heating customers, in this instance is sorely aggravated in that the Program, although it could have broad application, is obviously primarily designed to promote add-on heat pump systems, wherein the heat pump ceases to provide heat at the coldest temperatures, thereby requiring that Laclede furnish low load factor heat pump users with gas at times when Laclede's gas supplies are most expensive. All of these burdens on Laclede were, in fact,

well-documented, and confirmed by the Commission in the Commission's Order in Case No. CR-82-158.13/

UE's Application is totally silent as to the negative, competitive consequences of the proposed Program on Laclede and its customers. UE offers no excuse for these "side effects", but chooses to ignore them and rely on barren conclusions claimed to show "good cause."

Certainly, these dire consequences to competitors and customers, even UE's customers, results which UE's Application blithely ignores, cannot possibly be overlooked by the Commission in its determination as to whether or not "good cause" exists for variance approval.

- E. THE COMPETITIVE PROMOTION UE PROPOSES FLIES IN THE FACE OF UE'S PRIOR ASSURANCES TO THE COMMISSION THAT A "GOOD CAUSE" VARIANCE AMENDMENT TO THE RULES WOULD FOSTER ONLY NON-COMPETITIVE PROMOTIONS.

When the Commission Staff, The Office of the Public Counsel and Laclede opposed the amendment of the Rules to permit a variance therefrom for "good cause" shown, an amendment proposed by UE and other electric utilities, UE repeatedly

13/ Despite the factors referred to above, Laclede has not sought for some years to institute a special charge to add-on heat pump customers to reflect the foregoing, in view of the limited number of heat pumps in use. However, if this promotional Program is successful, it may be necessary for Laclede to institute a new tariff filing designed to recover this extra burden, since it will be materially increased as more heat pumps are sold. To do otherwise, would impose an undue burden on Laclede's non-heat pump heating customers who would, in the absence of such Laclede action, be unfairly required to bear this added burden of low-load factor, high gas cost usage by customers who are converted to heat pump usage through UE's promotional efforts.

assured the Commission that the variance amendment would not foster competitive promotional practices. UE's Reply Comments stated:

"Opponents to the proposed amendment also seem to fear that all applications for waivers would involve harmful promotional practices. The proponents of the rule change have demonstrated in their initial comments, however, that programs which meet the definition of a "promotional practice" exist which are non-competitive and beneficial to consumers. These are the type programs the amendment to the rule would foster." (emphasis supplied)14/

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"Further, proponents of the rule have demonstrated, however, that programs exist which are technically promotional in nature, but which do not have a discriminatory effect. U.E's proposed program of dusk-to-dawn lighting would be open to all customers equally. It could be beneficial to U.E. customers and at the same time it would have no competitive impact on Laclede business." (emphasis supplied)15/

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"Proponents of the amendment do not seek total promotional freedom, but only the freedom to propose programs which although technically may be "promotional," in reality will be are [sic] beneficial to the public and non-competitive in nature. (emphasis supplied)16/

The Commission's Order of Rulemaking approving the variance amendment reflects the Commission's reliance on these assurances:

"The reply comments of one of the petitioners are most persuasive toward acceptance of the amendment.

14/ Reply Comments of Union Electric Company filed June 30, 1988, page 4, Case No. EX-88-223.

15/ Id., page 5.

16/ Id., pages 6-7.

"The petitioner's reply comments also observe that there will be no escalation of competitive practices to the extent that the commission approves noncompetitive programs, the type which the petitioner believes will be approved. (emphasis supplied)17/

Yet this proposed UE Program is clearly competitive in nature, and patently demonstrates UE's determination, despite its past protestations and assurances to the contrary, to pursue variances which are designed to sell more heat pumps and increase its profits, all to the detriment of Laclede, its shareholders and utility customers.

UE's retreat from its previous assurances as to its intentions to initiate non-competitive programs through the variance process, is clear proof of its intention to rekindle the promotional wars and their damaging consequences to suit its own purposes. The satisfaction of UE's self-serving objectives is not a proper showing of "good cause" for a variance from the Rules.

6. UE's Application in this proceeding contains merely conclusions without substance, supporting data or fact. For example, there is not even any estimate of the number of heat pumps which the Program would cover; the effect of such sales on competitors, their customers; or UE's customers; or the degree of anticipated increase in UE earnings. Moreover, the Application fails to present any data on purported savings on

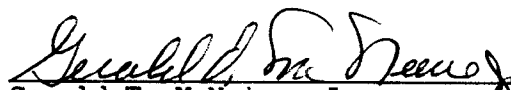
17/ Order of Rulemaking, Missouri Register, Vol. 13, No. 17, September 1, 1988, pages 1439-40.

heating and cooling costs, or the purported greater cleanliness of heat pumps and their safety in comparison to flame-type heating systems. These are just illustrative of some of the more obvious factual voids. In short, the proposed Program is not only bereft of any valid "good cause" foundation; but also should be dismissed because the Application fails to present the most rudimentary facts concerning the Program, its purported "benefits," and its serious negative consequences.

WHEREFORE, for the reasons stated above, Laclede respectfully requests that the Commission issue its Order: (1) denying the variance Application of UE filed herein; or alternatively (2) if the Commission is presently unwilling to deny the variance Application, granting intervenor status to Laclede in this case, and setting the matter of the variance Application for hearing.

Respectfully submitted,

LACLEDE GAS COMPANY


Gerald T. McNeive, Jr.
Associate General Counsel
720 Olive Street, Room 1528
St. Louis, MO 63101
314-342-0513

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon Michael F. Barnes, Attorney, Union Electric Company, P.O. Box 149, St. Louis, MO 63166; Mary Ann Young, General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102; and Lewis R. Mills, First Assistant Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, by enclosing the same in an envelope addressed to such individuals at their respective addresses with postage fully prepaid, and by depositing said envelopes in the United States mail in St. Louis, Missouri, this 28th day of January, 1991.



Gerald T. McNeive, Jr.