BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Laclede Gas Company for an Accounting Authority Order Authorizing the Company to Defer for Future Recovery the Costs of Complying With the Permanent Amendment to the Commission's Cold Weather Rule	)))))	Case No. GU-2007-0138

BRIEF OF LACLEDE GAS COMPANY

COMES NOW Laclede Gas Company ("Laclede" or "Company") and, pursuant to the Commission's Procedural Order in this case, submits its brief in the above-captioned proceeding:

ARGUMENT

The purpose of this proceeding is to determine what amount of compliance costs Laclede should be permitted to recover in its next general rate case proceeding in connection with the Commission's 2006 Permanent Amendment to the Cold Weather Rule. (*See* the Commission's Order of Rulemaking[1] set forth in Exhibit 1 to Schedule 1 of the Testimony of James A. Fallert (which testimony was marked and received into evidence as Exhibit 1.)[2] As currently codified in Section 14 of 4 CSR 240-13.055 of the Commission's Rules, the Permanent Amendment specifies how such costs are to be

[1] On August 11, 2006, the Commission issued its Order of Rulemaking in Case No. GX-2006-0434, effective November 1, 2006, in which it adopted on a permanent basis a number of the provisions that had been placed into effect as part of an Emergency Amendment made to the Cold Weather Rule in 2005 and adopted several new provisions (the "Permanent Amendment). Among other things, the Permanent Amendment permitted customers who had previously broken a Cold Weather Rule Agreement to reconnect or maintain service by making a smaller upfront arrearage payment than what could have been collected under the pre-existing rule (i.e. the lesser of 50% or $500 of arrearages versus 80% of arrearages). The Permanent Amendment also contained terms describing how gas utilities should calculate and recover the costs of complying with the CWR Permanent Amendment. *See* Section 14 (F) and (G). The Permanent Amendment also directed that gas utilities calculate and defer costs under the Emergency Amendment upon the same terms as those set forth in the Permanent Amendment.

[2] Mr. Fallert's Testimony was marked and received into evidence as Exhibit 1. It includes one schedule, which is titled Schedule 1. Schedule 1 contains nine pages plus nine exhibits. These exhibits will be referred to herein as Exh. 1, Schedule 1, Exhibit x.

calculated and provides for a separate proceeding of the kind just held in the event all parties cannot reach agreement on what the amount should be. Pursuant to those rule provisions, Laclede respectfully submits that the compliance cost amount recommended by the Company and the Staff of the Missouri Public Service Commission ("Staff") in the proceeding is the only lawful, reasonable and appropriate amount that has been offered in this proceeding. For all of the reasons discussed below, this compliance cost amount should accordingly be approved by the Commission.

A. The method developed and recommended by the Office of the Public Counsel in Laclede's 2007 Rate Case proceeding to calculate compliance costs in accordance with the requirements of Commission Rule 4 CSR 240-13.055(14) complies in all material respects with those rule provisions and should therefore be used for that purpose in this case, as Laclede and the Staff have done in this proceeding.

As part of the Non-Unanimous Stipulation and Agreement filed in this case on February 28, 2008, the Company and Staff have recommended that the Commission authorize Laclede to recover in its next rate case a compliance cost amount of $2,494,311, plus interest at Laclede's annual short-term borrowing rate commencing September 30, 2007. (*See* Exh. 1, Schedule 1, Exhibit 9). To derive this amount, the Company and Staff used the same methodology that was sponsored by Ted Robertson of the Office of the Public Counsel ("Public Counsel") in the Company's 2007 Rate Case proceeding, Case No. GR-2007-0208 (the "2007 Rate Case") to determine what costs Laclede should be permitted to recover in that case (under identical cost calculation rules) for complying with the Commission's 2005 Emergency Amendment to the Cold Weather Rule.

It is important to note that in his direct testimony in the 2007 Rate Case, Mr. Robertson indicated that his purpose in calculating and recommending a compliance cost amount was to reflect the cost levels that Laclede should have booked for recovery "pursuant to the methodology prescribed in the cold weather rule." (*See* page 9, lines 16-18 of that testimony, which is attached as Exhibit 6 to Exh. 1, Schedule 1). Mr. Robertson again confirmed to the Commission that this was his objective when he addressed the issue during the presentation of the Stipulation and Agreement in the 2007 Rate Case that, among other things, reflected his recommended compliance cost amount. As Mr. Robertson said in response to a question from then-Commissioner Gaw regarding how Public Counsel had arrived at its recommended compliance cost amount: "I had a Commission Order to rely on. We followed it." (*See* page 55, lines 11-12 of that transcript, which is attached as Exhibit 8 to Exh. 1, Schedule 1).

Indeed, it is clear from even a cursory review of the cost calculation language set forth in Section 14 of the Permanent Amendment that Mr. Robertson pursued his objective of complying with the Commission's rule provisions in an independent, thoughtful and thoroughly conscientious manner. In terms of calculating compliance costs, the language set forth in Section 14 specifically provides that the amount to be deferred and recovered by the utility shall include:

(a) ". . . the unpaid charges for new service received by the customer subsequent to the time the customer is retained or reconnected by virtue of this section" (Section 14(F)4) ; plus

(b) ". . . the unpaid portion of the difference between the initial payment paid under this section [which is the lesser of 50% or $500 of the customer's arrearages] and the initial payment that could have been required from the customer under the previously enacted payment provisions of section (10) of this rule [which was typically 80% of the customer's arrearages], as measured at the

time of a subsequent disconnection for nonpayment or expiration of the customer's payment plan" (Section 14(F)4); plus

(c) ". . . interest [on the foregoing costs] at the utility's annual short-term borrowing rate until such time as it is recovered in rates (Section 14(F)3).

Section 14(G)1 goes on to state in more general terms that the amount deferred by the utility should include "all incremental expenses and incremental revenues caused by this section." (Tr. p. 75, ll. 4-5)

Consistent with these specific directives, Mr. Robertson calculated a total compliance cost of $5,033,655. (Exh. 1, Schedule 1, p. 4). As required by Section 14(F)4, this included (a) amounts reflecting the additional arrearages resulting from unpaid charges for new service received by customers after taking advantage of the new rule provisions, as well as (b) amounts reflecting the unpaid difference between the smaller upfront arrearage payment required under the new rule provisions (i.e. the lesser of 50% or $500 of existing arrearages) and the payment that could have been collected under the prior rule (i.e. 80% of existing arrearages). Consistent with Section 14(F)3, the amount calculated by Mr. Robertson also included $921,719 of interest at Laclede's annual short-term borrowing rate. (*Id*.)

In addition to recognizing these mandated cost components, Mr. Robertson also made or accepted several adjustments to his compliance cost amount to ensure that it reflected the "incremental expenses and incremental revenues caused by this section" as required by Section 14(G)1. In terms of ensuring that only incremental expenses were being recovered, Mr. Robertson eliminated certain administrative costs that had been sought by Laclede, presumably on the theory that all or a portion of such costs were already being recovered in rates. He also accepted a downward adjustment that Laclede

had made to reflect uncollectible expense amounts that may have already been included in Laclede's existing rates. Finally, to ensure that "incremental revenues" were being recognized, Mr. Robertson made another adjustment to reflect arrearage reductions which had taken place as a result of customer payments made subsequent to the time of reconnection. (*Id*.).

Although Laclede, and perhaps the Staff, may not have agreed with every element of Mr. Robertson's method, it clearly represented a good faith attempt to comply in all material respects with the letter and spirit of the cost calculation requirements of the Permanent Amendment. The parties therefore agreed to adopt Public Counsel's recommended compliance cost amounts for purposes of resolving that issue in the rate case.

The very same considerations also led Laclede and Staff to use Public Counsel's method in this case for purposes of calculating the compliance costs associated with the Commission's Permanent Amendment to the Cold Weather Rule. To that end, the $2,494,311 compliance cost amount set forth in the Non-Unanimous Stipulation and Agreement was derived in the exact same way as the compliance cost amount that Public Counsel witness Robertson recommended in the 2007 Rate Case, with the sole exception of a downward adjustment to reflect updated information. (Exh. 1, Schedule 1, p. 7). Specifically, like the compliance cost amount calculated by Public Counsel in the 2007 Rate Case, the $2,494,311 being recommended by Staff and Laclede includes:

(a) an amount ($930,221) reflecting the unpaid charges for new service that was received by customers after they took advantage of the new rule provisions, as required by Section 14(F)4 (Exh. 1, Schedule 1, p. 7);

(b) an amount ($1,529,432) reflecting the difference between the smaller upfront arrearage payment required under the new rule provisions (i.e. the lesser of 50% or $500 of existing arrearages) and the payment that could have been collected under the prior rule (i.e. 80% of existing arrearages), as also required by Section 14(F)4 (Exh. 1, Schedule 1, p. 7); and

(c) $34,658 of accumulated interest (from June 30, 2007 to September 30, 2007), together with a recommendation that Laclede continue to accumulate interest at its annual short term borrowing rate on the deferred amount, as required by Section 14(F)3 (Exh. 1, Schedule 1, p. 8).

As in the 2007 Rate Case, the $2,494,311 also reflects the same adjustments that Public Counsel had made or proposed in that proceeding to ensure that only incremental expenses and incremental revenues, within the meaning of Section 14(G)1, would be recognized. Specifically, the compliance cost amount recommended by Laclede and Staff: (a) continues Mr. Robertson's recommended elimination of administrative costs; (b) continues and updates the offset for uncollectible amounts that may have already been included in Laclede's base rates ($1,461,623); and (c) continues Mr. Robertson's recommended offset to reflect arrearage reductions that resulted from customer payments made subsequent to the time of reconnection. (Exh 1, Schedule 1, pp. 7-8).

It is self-evident from the foregoing that the compliance cost amount being recommended by Laclede and Staff has been calculated in a manner that conforms in all material respects with the specific cost calculation requirements of Section 4 CSR 240-13.055(14) of the Commission's Rules. It is supported by the specific records of literally thousands of customers whose actual balances and payments were tracked throughout the

period covered by the Permanent Amendment. (*See* Exhibit 2-HC) It is based on a calculation method that Public Counsel itself developed and used to determine the level of costs that Laclede should be permitted to defer and recover for complying with the changes that the Commission made to the provisions of the Cold Weather Rule. And it incorporates the very same cost calculation features that this Commission relied on – less than nine months ago and with Public Counsel's full endorsement – to determine what level of Cold Weather Rule compliance costs Laclede should be permitted to recover under identical rule provisions.

In view of these considerations, the evidence supporting the compliance cost amount recommended by Laclede and the Staff in this proceeding is not only compelling but conclusive. The Commission should accordingly approve that amount, together with the recommendation that Laclede be permitted to continue accumulating interest on such amount, all as set forth in the Non-Unanimous Stipulation and Agreement filed in this case on February 28, 2008.

For the same reasons, the Commission should reject in the strongest possible terms the opportunistic effort that Public Counsel has made in this case to disavow all of its previous representations on how 4 CSR 240-13.055(14) should be construed in its quest to retroactively deprive the Company of the compliance costs to which it is entitled as both a matter of law and fairness. As further discussed below, this effort is unlawful and completely unsupported by any meaningful evidence or legitimate public policy rationale. Indeed, Public Counsel's position, evidence and arguments in this case establish one thing and one thing only – that it is apparently willing to say and do anything to achieve a particular result, even if it entails discrediting the work of a fellow

employee who, by all objective indications, did nothing more than faithfully honor the law that Public Counsel now seeks to subvert in this case. Such tactics should not be sanctioned by the Commission.

B. Public Counsel's attempt in this case to disavow the method that it developed and used in Laclede's 2007 Rate Case to calculate compliance costs, so as to reduce the amount of such costs that Laclede is entitled to recover should be rejected by the Commission because it: (1) constitutes an impermissible collateral attack on prior Commission Orders; (2) is blatantly inconsistent with the requirements of 4 CSR 240-13.055(14); and (3) is otherwise unsupported by any evidence or legitimate public policy rationale.

Given the historical origins of the method used to calculate the compliance costs being recommended by Laclede and Staff in this case, and the fact that Public Counsel developed it, one must ask why there is any dispute at all in this case. Certainly, there has been no change in the rule provisions for calculating such compliance cost amounts since Public Counsel first developed its method. Nor has the rule been administered differently in this case than it was in the 2007 Rate Case. There is also nothing to suggest that the rule has produced some incredibly odd result that no one could have anticipated. In fact, the compliance cost amount being recommended for the winter period that the Permanent Amendment was in effect - - about $2.5 million – is only about half of what the parties recommended be recognized for the previous winter period covered by the Emergency Amendment.

No, the only thing that has changed between then and now is Public Counsel's asserted view of what the rule requires in terms of calculating compliance costs. According to the pleadings and testimony filed by Public Counsel and its witness, Russell

Trippensee, Public Counsel would now have the Commission believe that there is an inherent ambiguity in the rule's provisions that had never been noticed before, and that a proper application of the rule requires a significantly different result than what everyone, including Public Counsel, thought was appropriate just nine months ago. Indeed, Public Counsel goes so far as to suggest that the general language in Section 14(G)1 that permits utilities to defer the incremental expenses and incremental revenues completely negates the specific language in Section 14(F)4, that permits utilities to recover the difference between the initial payment they were entitled to collect under the new rule provisions and the initial payment they could have collected under the pre-existing rule.

To accept this argument, however, the Commission would have to conclude that an experienced regulatory auditor on Public Counsel's staff made some kind of colossal blunder less than a year ago on this very issue by erroneously representing to the Commission that the method endorsed in the 2007 Rate Case by all of the parties, and in this proceeding by Staff and the Company, was the correct one. The Commission would have to assume that he and these other parties somehow failed to either take into account or otherwise recognize the tapestry of legal and accounting arguments that Public Counsel is now weaving in an effort to short the Company on its compliance costs. The Commission would also have to believe that those Public Counsel employees charged with the responsibility of supervising and providing legal advice to Mr. Robertson also failed to pick up on what he was doing and advise him of all of the significant and sundry errors he was purportedly making in developing his recommendation that this was the right method for calculating costs under the rule -- a failure that continued through the filing of his testimony, through the drafting of the 2007 Rate Case Stipulation and

Agreement, through his presentation to this Commission in an open hearing, and right up to the moment that Public Counsel suddenly reversed its position five weeks ago..

There is simply no basis for drawing such a conclusion. To the contrary, it is abundantly clear that Mr. Robertson had it right; that there is no ambiguity whatsoever in how 4 CSR 240-13.055(14) is to be interpreted and applied, and that Public Counsel is simply alleging that there is an ambiguity in order to wage an impermissible collateral attack against the rule. In fact, it is clear that Public Counsel did not like the rule from the beginning. They argued against the cost recovery from the outset, and after the Commission issued an Order of Rulemaking, on August 21, 2006, Public Counsel applied for rehearing, using an example of how the rule worked to support their criticism. (Exh. 1, Schedule 1, p. 2; Exh. 1, Schedule 1, Exhibit 2, pp. 2-3). In that example Public Counsel clearly recognized that the language of the rule adopted by the Commission would permit a utility to defer and collect the difference between the initial payment it was entitled to collect under the new rule provision and the initial payment it could have collected under the pre-existing rule. Obviously, such an example is fully consistent with the understanding underlying Public Counsel's previous calculation of compliance costs in the 2007 Rate Case and completely at odds with its asserted interpretation in this case.

In any event, after the Commission denied Public Counsel's Motion for Rehearing on August 29, 2006, Public Counsel chose not to appeal the rule, making the rule final. (Exh. 1, Schedule 1, p. 2). As the Missouri Supreme Court said in ***Atmos Energy Corp. v. Public Service Comm'n***, 103 S.W. 3d 753, 758 (Mo. banc 2003), challenges to orders of rulemaking are subject to the appeal requirements of section 386.510 (Mo. Rev. Stat. §386.510 Vernon's 2000), requiring a party to file an appeal within 30 days after denial

of its application for rehearing. The result is that Public Counsel may no longer challenge this rule, and any such challenge, no matter how disguised, is an impermissible collateral attack on the rule.

Public Counsel also did not object to or appeal the Company's September 29, 2006 compliance tariff filing on the Permanent Amendment. (Exh. 1, Schedule 1, p. 3). The tariff became final on October 30, 2006 and as such, Public Counsel's challenge to the tariff's provisions is also an impermissible collateral attack, as set forth in the case of ***Licata v. Public Service Comm'n***, 829 S.W. 2d 515 (Mo. App. W.D. 1992).

At the same time, Laclede applied for the AAOs permitted under the Permanent Amendment. In its application, Laclede specifically cited section 14(F)4 as the section governing cost calculation. (Exh. 1, Schedule 1, p. 3; Exh.1, Schedule 1, Exhibit 5). Again, there was no protest from Public Counsel, and no assertion that any ambiguity existed in the rule. And then, as previously discussed, Ted Robertson filed testimony on behalf of Public Counsel in May of 2007 in the 2007 Rate Case in which no doubt whatsoever was expressed about the meaning of the rule and how to calculate costs. In fact, Public Counsel calculated the cost to the dollar, in the process reducing Laclede's filed amount. (Exh.1, Schedule 1, Exhibit 6) Nor did Public Counsel express any doubt about the rule's meaning in July of 2007, when the stipulation and agreement adopting Public Counsel's calculations was presented to the Commission. (Exh.1, Schedule 1, Exhibit 8)[3]

[3]It should also be noted that after Laclede filed its Request for Determination in this case on October 31, 2007, the other parties were asked to comment on whether this case should be handled within the Company's rate case. On November 9, 2007, Public Counsel filed comments opposing deferral of the case, and stating that in reviewing Laclede's filing, Public Counsel had discovered miscalculations in Laclede's request. There is no mention of an ambiguity in the rule; to the contrary the fact that Public Counsel could identify alleged miscalculations in such a short time is yet another indication that they understood just how

It is abundantly clear from the foregoing that there is no conflict in this rule and Public Counsel knows it. There is merely specific language in Section 14(F)4 of the rule that directs how compliance costs are to be calculated, together with general language in other sections of the rule authorizing recovery of these costs.

Nor is there any basis for asserting that this non-existent ambiguity permits the Commission to find that the general language in Section 14(G)1 eviscerates the specific language in Section 14(F)4 that authorizes the utility to recover the difference between the new and old rule's initial payment requirements. It is an axiomatic rule of construction that specific provisions trump general provisions. So in providing specific cost calculation instructions, Section 14(F)4 of the rule controls the general provisions on the cost of compliance. This rule of construction also applies even if there were a conflict in the Permanent Amendment, which there is not. As the Supreme Court of Missouri most recently stated in January of this year in ***Kidde America, Inc., v. Director Of Revenue***, 242 S. W. 3d 709 (Mo. banc 2008), under well-settled rules of statutory construction, specific provisions prevail over general provisions. Even where there is a conflict between two separate statutes enacted at the same time that address the same subject matter, the conflict should be resolved by giving effect to the more specific provision. ***Lane v. Lensmeyer,*** 158 S.W.3d 218, 225-26 (Mo. banc 2005).

Since the specific provisions of 14(F)4 control the general provisions, there is no ambiguity in this rule. Thus, there is no need or even discretion to interpret the instructions in 14(F)4 other than as they are clearly written. ***Kearney Special Road District v. County of Clay,*** 863 S.W.2d. 841, 842 (Mo. banc 1993); ***State v. Burns,*** 978

---

the rule worked. Less than four months later, Public Counsel filed a pleading attacking the rule and claiming that it is suddenly ambiguous. None of the alleged miscalculations were forthcoming.

S.W.2d 759 (Mo. 1998); ***State v. Rousseau,*** 34 S.W.3d 254, 259 (Mo. App., W.D. 2000). When the intent is apparent from the words used and no ambiguity exists, there is no room for construction even when a Commission may prefer a policy different from that of an earlier Commission. *See* ***Kearney, supra,*** at 842. *See also* ***Allstates Transworld Vanlines, Inc. v. Southwestern Bell Telephone Co.***, 937 S.W.2d 314, 317 (Mo. App. 1996); ***Jones v. Director of Revenue,*** 832 S.W.2d 516, 517 (Mo. 1992).

Finally, another elemental rule of construction is that a statute or rule should not be construed in a way that would render provisions of the statute or rule meaningless. ***Edwards v. Gerstein***, 237 S. W. 3d 580 (Mo. banc 2007). That, however, is precisely what Public Counsel's newfound interpretation of the Permanent Amendment would do by effectively reading out of the rule in its entirety the provision in Section 14(F)4 that permits the utility to count and recover the difference between the initial payment required under the new rule provision and the initial payment required under the old rule provision.

In summary, for a year and a half, Public Counsel's actions consistently showed that they had a precise understanding of the cost calculation provisions of the Permanent Amendment, although they didn't necessarily agree with the rule or support it. Public Counsel had applied for rehearing but didn't appeal either the Order of Rulemaking approving the Permanent Amendment or the Company's compliance tariff; Public Counsel gave concrete examples of how the rule worked, and took the lead in the Company's 2007 Rate Case in calculating the costs of compliance with the rule and explaining it to the Commission. In view of these considerations, it is clear that Public Counsel's challenge to the compliance cost amount being recommended in this case is

nothing more than an impermissible collateral attack masquerading as argument over an ambiguity that does not exist. For this reason alone, Public Counsel's position should be rejected.

Moreover, even if it was permissible to consider Public Counsel's position and arguments in this proceeding, which it is not, the fact remains that there is no substantive, let alone persuasive, evidence to support its position. Nor is there any legitimate public policy rationale for the outcome Public Counsel recommends.

As previously noted, Public Counsel has taken the position that Laclede should not be allowed to recover *any* amount in connection with the costs it incurred as a result of the rule's reduction (from 80% to the lesser of 50% or $500 of the customer's arrearage) in the initial payment that Laclede was permitted to collect from a customer who had previously broken a Cold Weather Rule agreement. According to Public Counsel, this reduction did not really impose any incremental cost on Laclede and the Company is therefore ineligible to recover the difference between the old and the new initial payment requirement, notwithstanding the rule's clear language to the contrary.

The notion that there are no cost consequences associated with such a rule change is simply ludicrous. Indeed, on cross-examination, even Public Counsel witness Trippensee acknowledged that such a rule change could have potential cost consequences for the utility. (Tr. 96, line 20 to Tr. 97, line 10). And the record in this case is replete with examples of why a reduction in the initial payment requirement does just that.

As Mr. Fallert observed in response to a question from Commissioner Jarrett, the most effective tool the Company has to collect on past due utility bills is the right to deny or discontinue service as the heating season approaches. (Tr. 66, line 24 to Tr. 67, line

12). That is when customers most value the service that Laclede provides and when the Company has the most leverage to insist that they pay for it. (*Id.*). By significantly reducing how much of his or her arrearage the customer must pay in order to retain or restore service at this critical time, the rule imposes a very real opportunity cost on the utility. (*Id.*).

But that's just the start of it. As Mr. Fallert explained in his testimony, by lowering the amount that the Company could collect up front from customers who wished to restore or maintain service, the rule had the effect of not only permitting more customers with poor payment histories to receive service, but also ensured that such customers would have significantly larger arrearages going into the winter than would have otherwise been the case. Such a result would undeniably tend to increase arrearages and bad debt levels. (Exh. 1, p. 5). Indeed, because the energy assistance money available to social service agencies is finite and does not increase because there has been a change in the Commission's Cold Weather Rule (Tr. 156, lines 4-24), the reduction in initial payment amounts simply allowed more high risk customers with higher balances to get or stay on, without *any* net increase in the upfront money received by the Company.

Such a change also had the effect of reversing or simply deferring the time when many of these customer accounts would have otherwise been recognized as bad debts on the Company's books, a circumstance that results in an understatement of the bad debt levels currently being recovered in rates. (Exh. 1, p. 5). How does this effect of the rule financially impact the Company in the real world?

Well, assume that a customer owed the Company $1,000 at the time the rule went into effect in November of 2006. Assume further that the rule operated as intended and

allowed the customer to restore service for a payment of 50%. Pursuant to the rule's provision, the Company would be able to defer and recover in some future rate case the difference between 50% ($500) of the arrearage and 80% ($800) or $300, assuming that customer did not pay the arrearage down. Assume instead that the rule change had *not* been adopted by the Commission and as a result the customer was not able to restore service. Under those circumstances, the Company would have written off the *entire* $1,000 and have it figured into the allowance for bad debts that was ultimately reflected in the revenue requirement and rates established in its 2007 Rate Case. This means that rather than receive a one-time payment of $800 (with $300 of it only being recovered over time and then only after a rate case), the Company would have been allowed to begin recovering $1,000 as soon as its rates went into effect and to continue recovering that amount each and every year thereafter until new rates were established. Assuming a three year time span between the establishment of old and new rates, that means the Company would have given up $3,000 in rate recoveries in the absence of the rule in exchange for the right to collect only $300 in recoveries under the rule. No cost consequences indeed! (Tr. 81-83; Tr. 161, lines 10-18).

Even Mr. Trippensee had to grudgingly admit that under the above circumstances the rule may have resulted in the Company foregoing the opportunity to collect this $1,000, not just once but on an annual basis after the resolution of the 2007 Rate Case. (Tr. 161, lines 10-18; Tr. 163, line 9 to Tr. 164, line 13). Indeed, his only retort was to claim that he did not know whether the bad debt allowance established in Laclede's 2007 Rate Case was based on a single year, or on a three or five year average, a factor that could presumably affect how much in recoveries Laclede gave up. (Tr. 163, lines 9-31).

But even under the three year average that Public Counsel Witness Robertson recommended be used to establish the Company's allowance for bad debts in Laclede's 2007 Rate Case, one third of the $1,000 would have been recognized in rates – a result that would have been worth $1,000 (3 times $333.33) to the Company over a three year period. (*See* page 8 of Mr. Robertson's direct testimony in Laclede's 2007 Rate Case in Exh. 1, Schedule 1, Exhibit 6). Once again, this foregone amount substantially exceeds the $800 in payments and deferred amounts that Laclede was permitted to collect under the rule.

Finally, by requiring the Company to restore or maintain service to more high risk customers than would otherwise be the case, this requirement in the Permanent Amendment would necessarily increase the Company's disconnection and reconnection costs and diminish the resources it had to pursue collection actions for other customers. (Exh. 1, p. 5-6). This factor, which has not even been taken into account in the compliance cost amount being recommended by the Company and Staff, is just one more of the real world consequences flowing from the rule changes adopted by the Commission that demonstrates the inherent reasonableness of the cost calculation language contained in Section 14(F)4.

Public Counsel offers nothing in its pleadings and testimony to counter these demonstrable, real world effects, save a series of unsupported and irrelevant assertions that are obviously designed to obscure rather than illuminate the issues that Public Counsel has improperly raised in this proceeding. For example, the dissertation on "accrual" versus "cash" accounting contained in Mr. Trippensee's testimony is nothing more than a series of words in search of a point. While Mr. Trippensee would have the

Commission believe that the "cash" accounting language in Section 14(F)4 somehow conflicts with the accrual accounting practiced by Laclede, the fact remains that it is entirely consistent with how rates are routinely established in Missouri. Although Laclede accrues a reserve for uncollectible write-off, that accrual is not used to establish rates, as Mr. Trippensee acknowledged. (Tr. 92-93). Instead, the Staff and Public Counsel (as demonstrated by the testimony filed by Mr. Robertson in Laclede's 2007 Rate Case) routinely use Laclede's historical, actual uncollectible write-offs to establish an allowance for this cost item. (*See* Exh. 1, Schedule 1, Exhibit 6, p. 8; (Tr. 92 and 93). The same thing is true of the accruals Laclede makes for injuries and damages expenses. (Tr. 95, lines 6-9). Once again, while Laclede may accrue for these items, those accruals are not used to set rates. As Mr. Trippensee acknowledged with respect to uncollectible write-offs, this dichotomy between the Company accruing for uncollectible write-offs and the use of actual, uncollectible write-offs to establish rates has not resulted in any reconciliation problems during the ratemaking process. (Tr. 94, line 24 to Tr. 95, line 5). Given these considerations, the claim that implementation of the cost calculation language set forth in Section 14(G)1 creates some kind of conflict that needs to be reconciled is simply a red herring.

Equally unavailing is Public Counsel's claim that the compliance cost amount being recommended by the Staff and Company needs to be trued-up to reflect additional customer payments. Once again, if Public Counsel actually believed that, it would have accepted the Company's initial proposal to defer the determination of compliance costs until Laclede's next rate case. (Tr. 47, lines 8-16). Instead, it was Public Counsel that

insisted that the matter be determined *now* in a separate proceeding as provided for in Section 14(G)2 of the Permanent Amendment. (*Id.*).

Having been granted its right under the Permanent Amendment to try the issue now, Public Counsel had a corresponding obligation under Section 14(G)2 to "present any evidence that the costs asserted by the utility should be disallowed in whole or part." Laclede respectfully submits that Public Counsel must do more than simply assert that everything should be deferred until Laclede's next rate case so that a true-up can be done. Such an approach is fundamentally inconsistent with the very hearing procedures that Public Counsel insisted be employed in this case. This additional attempt to subvert the rule's clear language should accordingly be rejected.[4]

Indeed, such a result is especially appropriate given the undisputed record on the evidence showing that the compliance cost amount recommended by Staff and the Company is very conservative because customer balances were measured as of September 30, 2007, pursuant to the rule's provisions. As Mr. Fallert explained, a September 30, 2007 cut-off point produces a conservative estimate of compliance costs because customers have had the entire summer to pay down their balances, which can be expected to go up again once the winter heating season arrives and bills increase correspondingly. (Tr. 46, lines 15 to 25; Tr. 58, line 9 to Tr. 59, line 6). This effect was further demonstrated by a comparison of the September 30, 2007 balances used to derive the compliance cost amount in this case to the balances for the very same customers

[4] When he testified at the hearing, Mr. Trippensee implied that Mr. Robertson had also recommended a true-up when he developed the cost compliance method that the Staff and Company used to derive their recommended compliance costs in this case. A review of page 10 of Mr. Robertson's testimony in the 2007 Rate Case, however, clearly indicates that any update he was recommending would have applied only for the period "prior to the conclusion of instant case." (Exh. 1, Schedule 1, Exhibit 6, page 10). In other words, there is nothing in Mr. Robertson's approach that suggests he envisioned some multi-year true-up of the kind proposed by Public Counsel in this case.

when measured as of March 31, 2007. As Mr. Fallert testified, such a comparison shows that the September 30, 2007 balances were indeed lower than the balances recorded at the end of March, 2007. (Tr. 59, lines 1-6). Notably, Mr. Trippensee testified at the hearing that he had no basis for disputing Mr. Fallert's conclusion that measuring balances as of September 30, 2007 produces a conservative number. (Tr. 98, lines 4-8). Given this undisputed evidence, Public Counsel's suggestion that the compliance cost amount recommended by Staff and Laclede needs to be trued-up is just another red herring, and an obvious one at that.

Finally, Public Counsel intimates at several places in its pleadings and testimony that perhaps Laclede's compliance costs are overstated because the Company let a specific customer on for less than the full initial payment it could have demanded or, conversely, because Laclede may have failed to disconnect service to a customer who had broken a payment agreement as soon as it could have. Although it was demonstrated during the hearing that there were no costs claimed by Laclede as a result of any leniency it may have shown a particular customer, it is to say the least extremely unbecoming to have such arguments tendered by the Office of the Public Counsel. No one has been a more forceful advocate over the years than Public Counsel when it comes to promoting programs and rule changes that are designed to help vulnerable customers retain or restore vital utility services. By all appearances, however, that commitment does not extend to dealing fairly and forthrightly with the costs associated with such endeavors. To the contrary, when it comes time to actually recover such costs, Public Counsel has shown that it will make virtually any argument it can to prevent that from happening,

including ones that make it ever more difficult to detect any real sincerity in its asserted concerns for at-risk customers.

For all of these reasons, it is clear that Public Counsel's arguments and position in this case should be rejected for the opportunistic, unconvincing and unlawful potpourri of assertions that they have so clearly been shown to be. Instead, the Commission should confirm that the Staff, Company and, yes, Mr. Robertson, have discharged their duty to comply with the explicit requirements of Section 14 of 4 CSR 240-13.055 and approve the recommendations set forth in the Non-Unanimous Stipulation and Agreement filed in this case on February 28, 2008.

Respectfully requested,

/s/ Michael C. Pendergast
Michael C. Pendergast, Mo. Bar #31763
Vice President and Associate General Counsel
Rick Zucker, Mo. Bar #49211
Assistant General Counsel - Regulatory
Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101
(314) 342-0532 (Telephone)
(314) 421-1979 (Fax)
mpendergast@lacledegas.com
rzucker@lacledegas.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Brief has been duly served on the General Counsel of the Staff of the Missouri Public Service Commission and on the Office of the Public Counsel on this 7th day of April, 2008, by hand-delivery, facsimile, electronic mail, or by placing a copy of such Request, postage prepaid, in the United States mail.

/s/ Gerry Lynch
Gerry Lynch