

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. CIOTONE

December 16, 2002

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

FILED³

DEC 16 2002

Missouri Public
Service Commission

Re: Case No. GT-2003-0117

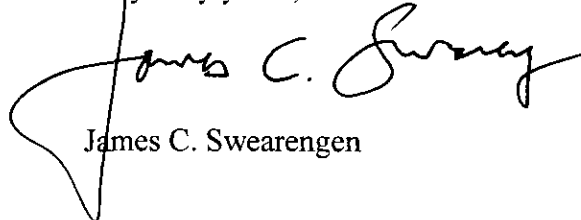
Dear Mr. Roberts:

Enclosed for filing on behalf of Laclede Gas Company, please find an original and eight (8) copies of Laclede Gas Company's Brief.

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

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

Very truly yours,



James C. Swearngen

JCS/lar

Enclosure

cc: All Parties of Record

FILED³

DEC 16 2002

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

Missouri Public
Service Commission

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

**BRIEF OF
LACLEDE GAS COMPANY**

December 16, 2002

Michael C. Pendergast
Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101

Rick Zucker
Laclede Gas Company
720 Olive Street, Room 1524
St. Louis, MO 63101

Attorneys for Laclede Gas Company

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction	1
II. Argument	10
1. Is there a need for a program similar in form to the one proposed by Laclede and, if so, what is the nature, immediacy, and scope of that need?	10
2. If there is a need, is the Program properly designed to address that need?	13
A. Does the Program have the Potential to Benefit or Harm Customers?.....	15
1. All Customers	15
2. Low-Income Customers	20
B. Does the Program have the potential to benefit or harm Laclede?	22
C. What revisions can or should be made to the operational terms of the Program.....	24
3. What Level of Funding is Appropriate?	27
4. How can the Program be Funded?	30
5. How should the Program be Funded?	36
6. Can weatherization, conservation, customer outreach and education, and administrative costs be included in the Program?	38
7. If so, how should they be included?.....	38
III. Conclusion	38

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

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

**BRIEF OF
LACLEDE GAS COMPANY**

Pursuant to the briefing schedule established in this case, Laclede Gas Company ("Laclede" or "Company") hereby submits the following Brief in the above-captioned proceeding to the Missouri Public Service Commission ("Commission").

I. Introduction

The experimental Catch-Up/Keep-Up Program (the "Program") proposed by Laclede in this case provides the Commission with a rare opportunity to help literally thousands of the Company's most vulnerable customers to regain or maintain their natural gas service -- customers who struggle every day on absurdly low incomes to secure the basic necessities of life. The opportunity afforded by the Program is rarer still because it would provide this critically needed assistance under terms and conditions that are also reasonably calculated to safeguard the interests of the Company's other customers as well.

Notably, no party to this case disputes that there exists a significant and immediate need for an assistance program to help Laclede's low-income customers regain or maintain their natural gas service. To the contrary, in its Statement of Position, the Office of the Public Counsel ("Public Counsel") notes that "[m]any of Laclede's customers cannot afford to pay the natural gas service that is necessary to heat their homes during the winter months." Similarly, the Department of Natural Resources

“DNR”) states in its Position Statement that “[t]here is a need for a low income assistance program. That need is immediate. It’s scope is substantial.” And even the Commission Staff (“Staff”), the most vigorous opponent of the Catch-Up/Keep-Up Program, acknowledges in its Statement of Position that “[t]here is a need to improve the current low-income assistance programs ... in the area of affordability of essential utility services.”

While every party acknowledges the need for a low-income program, however, and professes a desire to do something to assist low-income customers, Laclede, however, is the only party that has offered a workable and comprehensive Program that would actually translate these sentiments into meaningful action this winter. As discussed below, the Program that Laclede has proposed for that purpose is both lawful and reasonable in that it is:

- solidly rooted in other low-income and incentive programs that have previously been approved by this Commission, with the only material distinction being that, in contrast to other incentive programs, it flows through to Laclede’s customers, in either rates or through the grants and services provided under the Program, *all* of the savings achieved by the Company as a result of its negotiation of discounts from the maximum rates charged by its pipeline suppliers for transportation and storage services;
- reasonably designed to produce benefits for low-income and non-participating customers alike through the incorporation of program features (including requirements that participating customers seek

governmental sources of energy assistance, observe no-cost conservation measures and make timely and full payments in order to receive grants), that, in their purpose and effect, are virtually identical to, or superior to, those contained in other low-income programs approved by the Commission;

- structured in a manner that, compared to other low-income programs approved by the Commission, brings it even more squarely within the ambit of those kinds of experimental programs that Missouri courts have deemed to be lawful;
- properly reflective of the suggestions and recommendations of the other parties participating in this proceeding; and
- moderate in scope in that it would, at most, “cost” the typical residential customer about 62 cents per month (or less than one percent of the typical customer’s overall bill) to fund the Program, and then only in the unlikely event that the Program never produced a dime of additional savings by reducing bad debts and collection expenses or by encouraging the achievement of a greater level of pipeline discount savings than would have otherwise been the case.

Given these attributes, Laclede would submit that the Catch-Up/Keep-Up Program is an

experiment well worth pursuing.¹ Indeed, during her opening statement, even counsel for the Staff indicated that “[w]e certainly feel, however, that this program is worth a try to see if it actually assists some low-income customers in becoming regular pay customers.” (Tr. 26-27). Staff counsel further indicated that “if the Commission believes that the theory is worthy of further study to determine if the program works, *and Staff certainly believes that it is*, the Commission can implement the program on an experimental basis ...” (Tr. 29; *emphasis supplied*). Indeed, the Staff appears to have no real objection to the Program so long as it is “funded” by an Accounting Authority mechanism -- a mechanism which Laclede opposes for the reasons discussed herein. In fact, the Staff recommends that the Commission approve the Program on that basis. (Tr. 30). Public Counsel has also indicated that, aside from its funding concerns, it too would have no objection to the Commission approving a more limited version of the Catch-Up/Keep-Up Program, so long as certain modifications were made, many of which the Company has agreed to. (Exh. 4, p. 6; Exh. 14).

In Laclede’s view, all of this simply confirms the basic soundness of the Catch-Up/Keep-Up Program and the fact that the Program represents a reasonably structured

¹Given the experimental nature of the Program, which Laclede has clearly established by agreeing to limit both the term of the Program and the magnitude of the Program’s funding pending an evaluation of its effects, there should be no question regarding the Commission’s authority to approve the Program. The Commission and Missouri courts have consistently found that the Commission has broad authority to approve experimental rates for the purpose of acquiring the data necessary to fix just and reasonable rates. 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 1943); and *State ex rel. Laclede Gas Company v. Missouri Public Service Commission*, 535 S.W.2d 561 (Mo.App. K.C.D. 1976). By structuring the Program as experimental, the Company has brought it squarely within this broad range of Commission discretion.

and properly designed approach for addressing a compelling need for additional energy assistance. Laclede does not speak as a newcomer to the problematic issue of how best to restore and maintain critical energy services to customers who lack the means to pay for it. To the contrary, Laclede's actions over the years have demonstrated an earnest and long-standing commitment to helping its most vulnerable customers with their utility bills. On a more general level, that commitment has been reflected in the Company's continuing willingness to work with its most vulnerable customers to regain and maintain service even though doing so has imposed significant, unrecovered costs on the Company. Indeed, the undisputed evidence on the record in this proceeding indicates that since 1994 alone, the Company has under-recovered its bad debts – much of which is related to these efforts – by some \$7.5 million. (Tr. 200). Laclede's long-standing commitment to helping low-income customers has also been reflected in specific actions undertaken by the Company over the years. As Laclede witness John Moten, Jr. testified, Laclede has, among other things:

- assumed a significant leadership role in advocating increased funding at the federal level for the Low Income Home Energy Assistance Program (“LIHEAP”) -- a role that is evidenced, in part, by Mr. Moten's own work over the past fourteen years with various groups that support LIHEAP funding, including the National Fuel Funds Network (“NFFN”), which Laclede helped found in 1984 with Sister Patricia Kelley, the National Low Income Energy Consortium, the LIHEAP Coalition, the National Consumer Law Center, the American Gas

Association and Associated Gas Distributors. (Exh. 1, pp. 19-20).²

- actively promoted energy assistance funding and programs at the state level in cooperation with the Commission, the Committee to Keep Missourians Warm (of which Laclede is an active founding member), the Public Counsel and other parties. (Exh. 1, pp. 20-21).³
- provided administrative support and monetary contributions to private energy assistance organizations that solicit small contributions from the public, and raise contributions in cooperation with corporate partners through programs such as Dollar-Help, which Laclede helped co-found. (Exh. 1, p. 21).⁴
- developed and implemented a Customer Assistance Program ("CAP") under which Laclede uses its community services, meter reading and other personnel to identify and obtain assistance for particularly vulnerable customers who received

²The NFFN, with assistance from Laclede, has annually submitted oral and written testimony in support of LIHEAP funding before relevant Congressional committees for the last fifteen years. Mr. Moten has also made presentations on energy assistance issues and needs before almost all of the above organizations' national conferences, as well as testified before Congressional and Missouri House and Senate committees (Exh. 1, pp. 19-20). In March 2000, he presented the American Gas Association's oral testimony in support of LIHEAP funding before the U. S. House Labor-HHS and Education Appropriations Subcommittee (Exh. 1, p. 20).

³ Along with the assistance of other parties, Laclede worked for the introduction and passage of the Missouri UtiliCare bill in 1997 which expanded assistance eligibility to include low-income households, as well as elderly and handicapped households. Many members of the Committee to Keep Missourians Warm have stated that Laclede's leadership efforts were a major factor in the passage of the UtiliCare bill. (Exh. 1, pp. 20-21).

⁴ The Company provides all of the needed administrative support for Dollar-Help to ensure that all funds donated can be used exclusively to assist needy, low-income households. Since the Program's inception to date, Dollar-Help has raised almost \$10 million. (Exh. 1, p. 21). The Program assisted about 3,100 families this past year. In total, Dollar-Help has assisted over 43,000 needy families since its inception (*Id.*).

energy assistance the previous year, but whose gas service was not active at the start of the Missouri Cold Weather Rule period. (Exh. 1, p. 22).⁵

- developed and implemented a Customer Education Program ("CEP") under which Laclede conducts workshops at various social service agency sites for low-income customers in order to: (a) provide them with information on how they can implement various low or no-cost energy conservation measures to reduce their energy usage; (b) encourage them to contact the Company when they have problems paying their bills; and (c) help them to obtain assistance from the social service agencies whenever possible. (Exh. 1, p. 22).⁶
- developed and implemented a WeatherWise Program, under which Laclede employees, family members and friends volunteer to weatherize homes for low-income, elderly and handicapped customers with kits and tools funded by Laclede. (Exh. 1, p. 23).⁷

Notably, all of these programs developed by Laclede have won industry awards and recognition for their design and service delivery.⁸

⁵ During the 2000-01 winter, Laclede provided information to 3,247 households under the CAP Program and obtained assistance funds totaling \$94,309.03. (Exh. 1, p. 23).

⁶ Since February 1996, the customer education workshops conducted by Laclede pursuant to the CEP Program have assisted over 1,122 households and obtained energy assistance totaling \$476,917. (Exh. 1, p. 23). In addition to undertaking these educational efforts on its own, Laclede is a supporter of Energycare, a not-for-profit agency established by the late Sister Patricia Kelley to help low-income households locate needed assistance as well as to provide energy education and assistance services. (*Id.*).

⁷ As a result of the WeatherWise Program, more than 600 households have been weatherized over the last six years. (Exh. 1, p. 23).

⁸ Laclede is also a member of Operation Weather Survival ("OWS"). (Exh. 1, p. 24). OWS, whose membership consists of representatives of local government, utilities, and not-for-profit agencies, was formed to develop a comprehensive network of energy experts to disseminate vital information in weather emergencies to avoid tragedies. (*Id.*). OWS was asked to assist the City of Chicago in developing a similar program in the aftermath of the 1995 heat disaster and related deaths. Laclede's Manager of Community Services chairs the OWS Cold Weather Committee. (*Id.*).

In addition to undertaking these initiatives, Laclede has also demonstrated its commitment to helping its low-income customers in the way it has implemented the Commission's regulatory policies. For example, Laclede has consistently made utility service available to its low-income customers under terms that go well beyond what it is required to do under the Commission's Cold Weather Rule ("CWR"). (Exh. 1, pp. 18-19). As Mr. Moten explained, subsequent to the winter of 2000-2001, when spikes in wholesale prices and colder weather caused sharp increases in customer bills, Laclede voluntarily initiated a Catch-Up Program that essentially gave its customers the relaxed payment requirements of the CWR well before the beginning of the winter heating season when the Rule normally applies. (*Id.*). The Company was also among the first Missouri utilities to implement the Emergency Amendments to the CWR during the winter of 2001-2002. (*Id.*). In addition, Laclede has in the past gone, and is currently going, beyond the strict requirements of the Commission's CWR in an effort to help customers restore their service. (*Id.*). Specifically, Laclede has followed an internal policy that allows customers who have failed to maintain a previous payment agreement to have their service restored by paying only half of their arrearages on the first \$1,000 they owe, rather than the higher payment (i.e. an amount equal to all of the customer's delinquent payments) that utilities are generally permitted to demand under the CWR. (*Id.*, see also 4 CSR 240-13.055(8)(C)(2)).

Laclede has also pursued regulatory policies that are likewise designed to benefit its low-income customers while also safeguarding the interests of its other customers. One example of the Company's efforts in this regard was its opposition in a 1995 PGA rate design proceeding to proposals by the Staff, AmerenUE and its industrial customer

that would have shifted greater gas cost recovery to the winter period. *See In the matter of Laclede Gas Company's PGA Rate Design*, Case No. GR-94-328, 4 Mo.P.S.C 2d 32 (1995). In opposing that change, Laclede argued, in part, that such a change was inappropriate because it would significantly increase the burden on its most vulnerable customers during a time of the year when their bills were already highest. (*Id.* at 37). Laclede further asserted that such a result would harm both its low income customers immediately as well as other customers eventually by ultimately increasing the level of bad debts and collection costs experienced by the Company – a conclusion with which the Commission agreed in rejecting the proposed rate design change. (*Id.*). And since that time, the Company has continued to search for affirmative ways to lessen the financial burden of both wholesale gas prices and weather on the bills of all of its customers, including low-income customers. Laclede's comprehensive hedging program which enabled the Company to increase its PGA rates by only 1 percent in November of this year, and its proposed weather mitigation rate design that was approved in the Company's last rate case, are two of the most recent examples of these efforts. *See Re: Laclede Gas Company*, Case No. GR-2002-356, Report and Order (October 3, 2002).

In short, the Company's experimental Catch-Up/Keep-Up proposal is simply another, albeit critically important, element in an on-going and sustained effort to assist low-income customers with their bills. But more than that, the Program is an opportunity to give thousands of customers a measure of hope that as they try and do those things that are within their means to do -- things like conserving energy and reforming payment behavior in a manner that helps all customers -- that a helping hand will, in turn, be extended to assist them with the challenges they cannot overcome by themselves. For all

of these reasons, as well as those discussed below, Laclede urges the Commission to seize this opportunity by approving the Catch-Up/Keep-Up Program, with the modifications that the Company has agreed to make in response to the recommendations of the parties.

II. Argument

1. Is there a need for a program similar in form to the one proposed by Laclede and, if so, what is the nature, immediacy, and scope of that need?

As noted above, there is little or no dispute among the parties to the case regarding the need for additional energy assistance for the Company's low-income customers. Indeed, the Company, Staff, Public Counsel and DNR all attested in the respective Statements of Position to the significant need that exists for providing additional financial assistance to Laclede's most vulnerable customers -- and for good reason. The evidence presented in this case paints a sobering picture of significant and continuing declines in federal LIHEAP funding -- a decline that will only be exacerbated by what is likely to be a complete dearth of any state appropriations this winter for low income energy assistance funding. As Mr. Moten testified, it is anticipated that LIHEAP funding for Missouri this winter will be some \$9 million dollars less than the \$41 million received last winter and over \$19 million less than the \$51.4 million in LIHEAP funding that was received for the winter of 2000/2001. (Exh. 1, pp. 15-16). In addition, it is highly unlikely that the State of Missouri itself will be in a position to provide any meaningful energy assistance this winter under the state's UtiliCare Program given its current budget constraints. (*Id.*).

Unfortunately, these substantial declines in the level of resources available to assist low-income customers come at a time when the need for such assistance is as great

or greater than ever. That need is evidenced, in part, by the fact that many of the Company's customers continue to experience difficulty in paying their bills. As of September 30, 2002, there were 110,324 residential customers on Laclede's system with total arrearages of \$18,523,000. (Exh. 2, p. 3). Even more significant, a total of 21,080 of these customers' accounts had been "finaled," meaning that, as of September 30, those customers were not receiving gas service. (*Id.*). The arrearages applicable to these customers alone totaled some \$9,927,000. (*Id.*).

The reasons why these huge arrearages exist among so many of the Company's customers is not difficult to discern. As both Laclede witness Moten and Public Counsel witness Barbara Meisenheimer noted, Laclede provides service to a large number of low-income customers. In fact, approximately 15 percent, or more than 90,000 of the Company's customers, have household incomes that are at or near enough to the federal poverty guidelines to qualify for LIHEAP funding. (Exh. 1, p. 15). According to Staff witness Tom Imhoff, the average annual income for the Company's low-income customers is \$8,123, an amount which equates to an income of \$677 per month. (Exh. 7, p. 5). And yet LIHEAP funding, even at the higher levels of prior years, has only been sufficient to provide assistance to about 15 to 20 percent of these customers. (Exh. 1, p. 15).

Clearly, something of the magnitude proposed by the Company must be done – a point that was underscored in even more compelling fashion by the people who testified at the local public hearing in this case. These are people who struggle every day to make ends meet under very difficult circumstances or who work on a daily basis with such customers to help them cope with their financial challenges. They included people like

Ms. Cecelia Fair and Ms. Janet Helem who have medical conditions and who, for one reason or another, have been unable to obtain the level of financial assistance required to pay their arrearages and maintain service. (Tr. 15-18). And people like Ms. Doris Thompson, who at 61 years of age, is out of work but not yet eligible to receive social security benefits, and who testified that the Catch-Up/Keep-Up Program "would help in a sense that if I can catch up, I -- maybe I can keep up. But the catching up has been too hard for me to even try to catch up." (Tr. 20). Also testifying was Ms. Yvette Harris who cares for a disabled son with cerebral palsy under very trying circumstances and who told how the Catch-Up/Keep-Up Program would help her in the following words:

Its just a hard thing with having a disabled son in your home and you don't have gas. And I have to bathe him. I have to -- I have to warm water to bathe him, and I have to warm water to do a lot of different things for him. So the Catch-Up/Keep-Up Program will help me, but you have to be caught up in order to keep up.

(Tr. 24). Those testifying in favor of the Program also included people like Ms. Jacqueline Hutchinson of the Human Development Corporation Energy Assistance Program and Amy Temple, the Public Utilities Ombudsman of Legal Services of Eastern Missouri. Both of these people work every day with low-income customers seeking ways to have their service restored or maintained and both were able to identify dozens of clients who would benefit from the Catch-Up/Keep-Up Program. (Tr. pp. 12-14; 28-30). Indeed, each of these people were able to explain, in their own way, how the Catch-Up/Keep-Up Program was needed to help customers restore or maintain utility service, break the cycle of repeated and prolonged service interruptions, and give those who need it most a realistic chance of becoming good-paying customers.

Fortunately, Laclede's customer service personnel were able to work with these particular customers and the agencies to find the resources necessary to restore or maintain their service. But there are thousands of other customers for whom the need for assistance is just as great and immediate and who currently have nowhere else to turn.

2. *If there is a need, is the Program properly designed to address that need?*

And that is precisely the need that the Catch-Up/Keep-Up Program is designed to address. As its name implies, the purpose of the Catch-Up/Keep-Up Program is to give low-income customers a meaningful opportunity to "catch up" and then ultimately "keep up" on their bills for natural gas service. For those low-income customers who are eligible to participate, the Program offers them the opportunity to initiate or retain utility service at a rate that is significantly more affordable given their very limited incomes. (Exh. 1, p. 4; Exh. 7, p. 5). It does so by computing the bill on a 12-month levelized basis, with arrearages excluded and with any financial assistance received from other sources used to reduce this levelized payment amount even more. (Exh. 1, p. 4; Schedule JM-1, p. 2). In addition, the Program gives customers an opportunity to work off those arrearages over time, so that in the future they will have a real chance to break the cycle of missed payments and prolonged service interruptions. (*Id.*).

However, while the Program is designed to give customers who need it a "hand up" it does not simply provide them with a "hand-out." For in exchange for receiving the more affordable rate and the grants required to work off their arrearages, customers must satisfy certain obligations imposed by the Program. Specifically, they must apply for any financial assistance from governmental sources for which they may be eligible, agree to implement no-cost conservation or weatherization measures that can reduce their energy

consumption, and demonstrate a commitment to making timely and complete payments on their reduced energy bills. (Exh. 1, pp. 4-5; Schedule JM-1, p. 2). As they do so, a portion of their arrearages will be eliminated each quarter. (*Id.*). As a result, customers have a *real* incentive to improve their payment performance and take these other bill reducing measures.

The Program also provides an additional incentive to reduce costs for all customers by specifying that the Program will be funded through the use of 30 percent of the pipeline discount savings achieved by the Company, up to an overall cap of \$6 million annually. (Exh. 1, pp. 5, 8; Schedule JM-1, p. 1). As a result of this feature, funding for the Program depends entirely on the Company's successful efforts to negotiate payment obligations with its pipeline suppliers for storage and transportation services that are below the maximum rates that the Federal Energy Regulatory Commission ("FERC") has deemed to be just and reasonable. (Exh. 1, pp. 4-5). In Laclede's view, this represents a marked enhancement to other low-income programs that have been approved by the Commission that simply increase base rates to all other customers in order to fund the assistance program. In contrast, the Catch-Up/Keep-Up Program provides an incentive to generate that funding by reducing, not increasing, an element of the Company's cost of service. In short, the Catch-Up/Keep-Up Program provides *both* the Company and its most vulnerable customers with incentives to take actions that are reasonably calculated to benefit *all* customers.

A. *Does the Program have the Potential to Benefit or Harm Customers?*

1. *All Customers*

In view of these attributes, Laclede believes that the Program is unquestionably designed to benefit all customers generally and low income customers specifically. (Exh. 1, pp. 4-5). And there is ample evidence on the record to indicate that the Program will indeed have this effect.

That evidence begins with the fact that from its inception, the Program has been designed to incorporate the elements of other low-income and incentive programs that have previously been approved by the Commission. In other words, rather than proposing a novel and untested approach for addressing the needs of low-income customers, the Company has borrowed heavily from initiatives that have previously been sanctioned by the Commission. Indeed, as Mr. Mike Cline explained in his direct testimony, *every single feature* of the Program is solidly rooted in low-income or gas cost incentive programs previously approved by the Commission. (Exh. 3, pp. 3-9). For example, the Program's emphasis on providing grants to low-income customers in exchange for them complying with certain requirements that are designed to benefit all customers is very similar in concept to the terms of Missouri Gas Energy's ("MGE") recently approved low-income program. Like the Catch-Up/Keep-Up Program, MGE's low-income program provides financial assistance to customers (in the form of monthly bill credits ranging from \$20 to \$40 depending on income level) so long as the customer stays current on his or her bill and observes certain other requirements. (Compare Exh. 3, Schedule MTC-3 with Exhibit 1, Schedule JM-1; Tr. 650-651). The Program's emphasis on providing customers with an opportunity to work off their arrearages in

exchange for improving their payment performance, as well as its focus on educating low-income customers on ways to implement conservation measures, are also very similar to two of the components of a low-income energy assistance program that was proposed by Public Counsel in Laclede's 1992 rate case. (Exh. 3, Schedule MTC-4, p. 5).

Notably, studies evaluating the experience with low-income programs in other states have shown that these kind of measures do indeed produce benefits for all customers in the long run by reducing uncollectible, disconnection and collection expenses below the levels that would have been incurred in the absence of such programs. (Exh. 1, pp. 17-18). Moreover, these are the very same studies that the parties to MGE's last rate case apparently relied on in recommending the low-income program that was ultimately approved by the Commission in that case. (*Id.*).

And there is every reason to believe that the Catch-Up/Keep-Up Program would be equally effective in producing such positive results for Laclede's customers. In fact, based on Staff witness Imhoff's side-by-side comparison of the Catch-Up/Keep-Up Program to the MGE low-income program during cross-examination, it became clear that the various features of the Catch-Up/Keep-Up Program are just as well designed and, 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, Mr. 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 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);
- 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 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).

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 Staff's initial criticisms of the Company's proposal. For example, in his direct testimony, Mr. Imhoff criticized the Company's proposal for not using a share of the pipeline discounts applicable to firm transportation customers to fund the Program, alleging that this resulted in firm sales residential, commercial and industrial customers paying more than their "fair share" of the Program's cost. (Exh. 7, pp. 12-13). 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, Mr. Imhoff was completely unable to reconcile Staff's approval of this residential-only funding concept in the MGE case with its criticism of Laclede's proposal in this case. (Tr. 665-667).

In his direct testimony, Mr. Imhoff also expressed the concern that to the extent there was a cost to fund the Catch-Up/Keep-Up Program, that such a cost would be

imposed on low-income customers as well as other customers of the Company. (Tr. 665). Once again, however, Mr. Imhoff acknowledged that the funding surcharge for the MGE low-income program is also applied to all customers, including low income customers. (Tr. 665-666).

Mr. Imhoff, like other Staff witnesses, also criticized the Catch-Up/Keep-Up Program on the grounds that it could result in a reduction in the Company's bad debts between rate cases – a circumstance that, in Mr. Imhoff's opinion, could lead to an inappropriate double recovery. (Exh. 7, p. 7). Mr. Imhoff expressed the hope during cross-examination, however, that MGE's low-income program, which Staff supports, would also lead to a reduction in bad debts for that company. (Tr. 671). Nevertheless, Mr. Imhoff conceded that there was nothing in MGE's tariffs containing its low-income program that purported to flow these reductions back to customers between rate cases. (Tr. 671-672). In contrast, Mr. Imhoff acknowledged that Laclede did, in fact, have a mechanism in place as a result of its last two rate cases that is designed to track and permit recovery of costs incurred by Laclede as a result of its implementation of the Emergency Amendments to the Cold Weather Rule. (Tr. 673, 674). And as Laclede witness James Fallert testified, to the extent Laclede's Program permits the Company to reduce the bad debts of those customers subject to this tracking mechanism, the financial benefits of those reductions will be tracked between rate cases and flowed through to customers as an offset to what they otherwise would have paid under the mechanism (Tr. 202).

In light of Mr. Imhoff's testimony, it is clear that the Catch-Up/Keep-Up Program is structured in a way that is reasonably designed to benefit all customers. Indeed, for the

reasons discussed above, it plainly has features that in many ways make it superior to the MGE low-income program that Staff and Public Counsel have already endorsed and that the Commission has already approved.

2. Low-Income Customers

The Program is also unquestionably designed to benefit the Company's low-income customers. By enabling such customers to initiate or retain utility service at an affordable rate and by including a truly innovative way for them to work off their arrearages in exchange for improving their payment practices, the Program provides these customers with a realistic opportunity to break the cycle of repeated and prolonged service disconnections. (Exh. 1, pp. 3-6). And based on the studies of how such programs have worked in other states, it appears to be an opportunity that those customers not only want but are willing to successfully use to change their payment behavior and history of repeated or prolonged service interruptions. (Exh. 1, pp. 17-18). Moreover, the testimony provided at the local public hearing in this case by both those who are struggling to make ends meet on very limited resources, and those who work with such customers every day, also underscored just how important it is to provide this opportunity. (Tr. 18 -30).

Notably, Staff acknowledged, as it must, that the Program would provide needed assistance to many customers who are in desperate need of it. (Exh. 7, pp. 2-3). And Staff and Public Counsel's sponsorship of other low-income programs previously approved by the Commission that provide grants and assistance to low-income customers only serves to underscore their recognition of the fact that programs like Catch-Up/Keep-Up do indeed benefit such customers. In fact, the only criticism they voiced of the Catch-

Up/Keep-Up Program was that it perhaps does not go far enough in that it would not also provide an ongoing credit to the customer's current bill and that it might entice some customers to regain service who would then be unable to pay their bills. (Exh. 7, pp. 4-7). Needless-to-say, it is illogical to suggest that a program that provides significant benefits to low income customers should be rejected because those benefits are not great enough. This is particularly true in a case, such as this, where there is absolutely no evidence to suggest that applying a credit to the customer's current bill rather than the customer's arrearage would produce any better result.⁹ It is equally ludicrous to suggest that a low-income customer is benefited or saved from harm by being refused service in those instances where reconnection *might* result in that customer incurring a greater level of arrearages in the future. Obviously, a customer coping with the cold under such a circumstance would be hard pressed to appreciate the favor that has been done him or her -- a point that Staff witness Imhoff seemed to recognize when responding to a question from Commissioner Murray:

Q. And is it Staff's position that the customer would be better off to be disconnected rather than to be allowed to accrue more arrearages?

A. No. No. We don't want -- we wouldn't want to see anybody freeze or anything like that, so, no, we don't -- we don't want anybody to be harmed.

(Tr. 699).

In light of these considerations, it is clear that the Catch-Up/Keep-Up Program

⁹ As Mr. Imhoff acknowledged during cross-examination, while Staff may prefer that financial assistance be provided to customers in the form of a credit to their current bills as is done under the MGE program, he has no idea whether that approach would be any more effective in helping customers than the Company's proposal to apply credit to the customer's arrearages since he had no knowledge of any cost/benefit analysis that may or may not underlie the MGE experiment (Tr. 668-671, 685-687).

has been designed in a manner that is reasonably calculated to benefit all customers generally and low-income customers specifically. In fact, from Mr. Imhoff's testimony, the comments of Staff counsel, and the testimony and comments of Public Counsel, it would appear that by the close of the hearing their only major objections to the Program related almost exclusively to the magnitude and method of Program funding and, in the case of Staff, to the possibility that the Program may have some beneficial financial impact on the Company between rate cases. As discussed below, however, these concerns are misplaced for a number of reasons.

B. Does the Program have the potential to benefit or harm Laclede?

Throughout its direct testimony in this case, Staff seemed to elevate one concern above all others in this proceeding, including about what Staff says is the need to do something to help the Company's low-income customers. Specifically, Staff seemed obsessed with the possibility that the Program could result in a financial benefit for Laclede between rate cases and appeared to suggest that this consideration alone should doom the Program. (Exh. 7, pp. 6-8; Exhibits 9, 10 and 11). In fact, Staff was apparently so focused on this concern to the exclusion of all others that it did not deem it necessary or appropriate to even sponsor a witness from the Commission's Customer Services Department who could have addressed the low income assistance aspects of the Program from the perspective of someone who works with low-income customers everyday. (Tr. 645-648).

Staff's focus on this issue is both inexplicable and disappointing. It is inexplicable because the Staff has never, to Laclede's knowledge, advised the Commission that it cannot take a particular regulatory action because it might have a

detrimental financial impact on utilities between rate cases. As Laclede witness Fallert noted in his rebuttal testimony, the Commission has on numerous occasions, imposed changes in safety and billing requirements, levels of assessment funding and various kinds of record-keeping requirements that have imposed additional costs on utilities between rate cases. (Tr. 204). And yet Mr. Fallert was unaware of a single instance where Staff has ever advised the Commission that it could not take such actions because they would have a detrimental financial impact on the utility. (*Id.*). Nor, as previously mentioned, has the Staff hesitated to recommend changes to the rate design of Laclede's PGA, even though adoption of those changes would have had a negative impact on the Company's bad debt levels and collection expenses between rate cases. *See In the matter of Laclede Gas Company's PGA Rate Design*, Case No. GR-94-328, 4 Mo. P.S.C.2d 32, 37 (1995). Given this history, it is difficult to view Staff's concerns as anything more than a highly selective and opportunistic attempt to raise an objection to the Program based on considerations that the Staff apparently deems to be completely irrelevant in virtually all other contexts.

Moreover, Staff's approach on this issue is particularly disappointing in light of the Company's previous decision to eliminate, in response to concerns that had been raised by the Staff, that feature of the Program that would have allowed Laclede to retain for its own use 10% of the pipeline discount savings achieved by the Company. (Exh. 1, p. 7). As a result of this decision, every last dollar of the 30% share of pipeline discounts would be used to fund and administer the Program and therefore go in their entirety to benefiting Laclede's customers. (Exh. 1, p. 7). This means, in turn, that any potential benefit to Laclede would only be an indirect one. Moreover, should such an indirect

benefit occur, it is likely to be modest. Both the Staff and the Company have recognized that the level of grants provided under the Program will not translate into a dollar for dollar reduction in the Company's uncollectible expense. (Exh. 2, p. 4; Tr. 725). In fact, Laclede estimates that the reduction will be somewhere between \$2 and \$3 million dollars. Moreover, to the extent these reductions do occur, a portion of them will be tracked and ultimately flowed through to customers as a result of the Company's Emergency Cold Weather Rule tracking mechanism. (Exh. 2, p. 4; Tr. 202).

Despite these considerations, however, Laclede hopes that it will, in fact, benefit at least to some extent from the Program because it can only do so if its' customers are also benefiting. In Laclede's view, such a result is not a problematic one as Staff would have the Commission believe. To the contrary, the Program's potential for producing this kind of "win-win-win" result under which all customers would be benefited generally, low-income customers benefited specifically, and Laclede benefited indirectly, should be recognized as a good public policy outcome that further enhances the Program's attractiveness. For all of these reasons, the Program should be approved.

C. What revisions can or should be made to the operational terms of the Program?

Throughout this proceeding and even before it commenced, the Company has demonstrated its willingness to make revisions to the Program in an effort to address the concerns raised and recommendations made by other parties. For example, in response to the Staff's and Public Counsel's reaction to the Company's initial filing of the Catch-Up/Keep-Up Program in July of this year, the Company made numerous revisions to the Program prior to refiling it in late September. (Exh. 1, pp. 7-13). These included, among others, revisions designed to: (a) eliminate the Company's right to retain 10% of the

pipeline discounts for its own use; (b) impose an overall \$6 million cap on Program funding; (c) establish certain escrow and refund safeguards; (d) clarify that any contracts needed to administer the Program would be subject to review by Staff and Public Counsel; (e) clarify that customers may be reinstated to the Program if their failure to comply with certain requirements was due to extenuating circumstances; (f) add, to the extent practicable, a preferred payment date option for customers participating in the Program; and (g) make the Program experimental. (*Id.*).

In their direct testimony in this case, both Public Counsel and, to a lesser degree, the Staff, submitted additional recommendations regarding proposed revisions to the Program. Although many of these recommendations were being raised for the first time, the Company nevertheless indicated its willingness in both its Statement of Position and during the course of the hearing to make further revisions to the Program in response to these suggestions, all of which were reflected in the specimen tariff contained in Exhibit 13. Specifically, Laclede agreed to:

- Public Counsel's and Staff's recommendation that a specific termination date for the Program be established. However, to permit the experimental Program to operate and be tested through at least three full winter seasons, Laclede believes that the termination and payment phase-out dates should be extended to March and September 2006, respectively. The Commission should also make it clear that prior to the termination date, any party, including the Company, would be free to seek an extension of the Program.
- Public Counsel's recommendation that administrative costs for outside third parties be initially limited to 5% of the Program's funding cap. Although Laclede believes that this amount may not be fully sufficient to cover some of the third-party customer education and outreach aspects of the Program, Laclede will search for other ways to accomplish these goals such as undertaking on its own more of the Program's administrative support functions.

- Public Counsel's recommendation that the arrearage reduction per quarter "be equal to" the lesser of 1/4 of the customer's arrearages or \$375. In response to Ms. Meisenheimer's comments regarding this change, the Company also agrees that the words "not exceed" in paragraph H.3.b on page 28-j of Exhibit 13 should be deleted and replaced with the words "be equal to."
- Public Counsel's recommendation to add back language to the tariff specifying that any reductions in the Company's uncollectible expense arising from the Program will be reflected in the Company's cost of service in its next rate case since such language had only been deleted by the Company due to the request of another party.
- Public Counsel's recommendation to lower the eligibility threshold for the Program from 175% of the poverty level to something lower, provided that the reduction applies to the first year only of the Program. Laclede also believes that the threshold should not be reduced below the 150% level reflected in the most recent amendments to the state's UtiliCare law and that after the first year of the Program the Company should be allowed to adjust the threshold back to 175% if experience shows that funding is sufficient to assist customers at this level.
- Public Counsel's proposed recordkeeping requirements as set forth at pages 13-14 of Barbara A. Meisenheimer's testimony. In response to Ms. Meisenheimer's further comments regarding the incorporation of this agreement in Exhibit 13, Laclede also agrees that in the event its proposal to establish the eligibility criteria at 150% and potentially 175% of the poverty level is adopted, that such income breakdowns would also be incorporated in subparagraphs viii to xvi on page 28-j of Exhibit 13.

In addition, Laclede also agreed to Public Counsel's proposal, which has also been endorsed by DNR, that \$300,000 of the Company's proposed Program funding be devoted to supplementing the Company's existing weatherization program -- an amount that should be proportionately reduced, however, if such funding levels are reduced.¹⁰

¹⁰There were several recommendations made by Public Counsel that the Company does not believe should be adopted. As discussed more fully below, this includes Public Counsel's recommendation that Program funding be limited to an overall amount of approximately \$3 million per year. (Exh. 4, pp. 10-11). The Company continues to believe that its proposed funding level is reasonable given the need that has been demonstrated in this proceeding for low-income energy assistance. Laclede also opposes Public Counsel's proposal that the Program not be implemented until contracts have been both reviewed by Staff and Public Counsel and approved by the Commission. (Exh. 4, pp. 12). This would constitute a completely unnecessary delay in implementing the Program this winter. Moreover, like its existing weatherization program tariff (in which contracts were reviewed by the parties without the necessity for Commission approval) (Tr. 755), there is already a provision in the Catch-Up/Keep-Up Program tariff that allows Staff

Finally, in response to a concern raised by Commissioner Lumpe regarding the potential for unused funds to be carried over from year to year, the Company would have no objection to reopening this aspect of the Program and making appropriate changes should this ever become a problem.

With these changes, Laclede believes that it has submitted for the Commission's consideration a lawful, well-designed and carefully-constructed Program for addressing the needs of the Company's low-income customers and protecting the interests of all of its other customers. Moreover, it is a Program that Laclede believes fairly reflects the legitimate concerns of all parties. For all of these reasons, the Program as modified in accordance with these recommendations, should be approved.

3. What Level of Funding is Appropriate?

Laclede believes that the proposed \$6 million funding cap which it has proposed for the Program is reasonable and justified for several reasons. First, it is proportionate to the need that has been identified. As previously noted, the Company has over 90,000 customers in its service territory who are currently eligible for LIHEAP and, based on historical experience, it can be expected that no more than 15 to 20 percent of those customers will be able to obtain LIHEAP funding. (Exh. 1, pp. 14-15). Moreover, as of September 30, 2002, the Company had 21,080 disconnected customers with arrearages totaling \$9,927,000 dollars. (Exh. 2, pp. 2-3). Given these needs, and the expected decline in LIHEAP funding, the \$5.4 million in Program funding that would be available

and Public Counsel to review any contracts that are executed in connection with the Program. (Exh. 1, Schedule JM-1, p.1, paragraph H.3). Accordingly, to the extent Staff and Public Counsel have any concerns regarding whether the contracts are in compliance with the terms of the tariff, they will have both the means and the opportunity to bring those disputes to the Commission's attention. Under such circumstances, Public Counsel's proposal is unnecessary.

for direct financial assistance under the Company's proposal is not excessive. To the contrary, it is fully proportionate to the need that exists.

The Company also notes that the only other party to seriously address what an appropriate level of funding would be was Public Counsel. In her testimony, Public Counsel witness Meisenheimer recommended an overall funding level of approximately \$3 million, with approximately \$2.6 million of that devoted to the arrearage grant aspects of the Program, and the remainder devoted to weatherization and administrative costs. (Exh. 4, pp. 10-11).

While Laclede believes that Ms. Meisenheimer's approach for determining an appropriate funding level was, in most respects, reasonable, (Tr. 205), it has one major flaw in that it assumes an average arrearage level of \$200 for all customers who would be eligible for the Program. (Exh. 4, p. 10). However, this \$200 amount was computed by looking only at the average arrearage levels of heat grant customers who were still receiving service from the Company.

Those most in need of assistance, however, are those customers who, because of their level of arrearages, have been unable to maintain service. As noted above, the more than 20,000 customers who fit into this category had total arrearages of nearly \$10 million. (Exh. 2, pp. 2-3). This equates to an average arrearage amount of almost \$500 dollars per customer, an amount that is more than double the \$200 average arrearage level assumed by Ms. Meisenheimer. Moreover, as Mr. Fallert testified in his rebuttal testimony, if one looks at those customers who have been disconnected and have previously received heat grants, the average arrearage level per customer rises to approximately \$1,000. (Tr. 206). Mr. Fallert was able to identify at least 3,000

customers who fell into this category alone. (*Id.*). Given these actual figures, the \$200 average arrearage level assumed by Ms. Meisenheimer clearly understates the actual needs and arrearage experience of those customers who are most likely to participate in the Program.

The funding amount proposed by Laclede is also modest by almost any measure. As Mr. Fallert testified, even if there were no savings produced by the Program, the cost of the Program would still equate to only about 62 cents per month for the typical residential customers or about one percent of the typical customer's bill. (Tr. 295). While Laclede understands that care should be taken in approving any expenditure, it is difficult to argue that 62 cents per month will have a materially different impact on customers than the 8 cents per month that was approved by the Commission in connection with the MGE's low-income program. Indeed, the difference is small enough that Staff apparently thought it was appropriate to round up its quantification of the impact of the Program on non-participating residential customers by some 60% to \$1 per month in the interests of simplicity. (Tr. 688). Moreover, for that 62 cents, the Company will be able to make the Program available to many thousands of customers more than those served by the MGE program.

Finally, it should be remembered that part of the information to be gathered in order to assess this experimental Program pertains to the level of interest and participation by the Company's customers. Setting the funding at too low a level of interest could make evaluation of this aspect of the Program problematic, while also denying the potential benefits of the Program to customers who need it now.

Accordingly, Laclede believes that its proposed funding level for the Program is both reasonable and proportionate to the need that exists. Nevertheless, in the event the Commission is inclined to consider a lower funding cap, however, as others have recommended, Laclede believes that it should at least be equal to the amount of Program funding that would have been produced before the Company proposed to supplement that funding with the 10% share of pipeline discounts that it had originally proposed to retain for its own use. In other words, the amount should, at a minimum, be equivalent to the \$4.6 million dollar amount that would have been produced had the Company's original proposal to use 20% of pipeline discounts to fund the Program been adopted. (Tr. 151).

4. How can the Program be Funded?

As previously noted, the use of pipeline discount savings to fund the Program provides an additional incentive to reduce costs for all customers by ensuring that the Program can only be funded if the Company is successful in efforts to negotiate payment obligations with its pipeline suppliers that are below the maximum rates that FERC has deemed to be just and reasonable. (Exh. 1, Schedule JM-1, pp. 1, 4-5). Once again, Laclede believes that this represents a marked enhancement to other low-income programs that have been approved by the Commission in that it does not simply increase base rates to all other customers in order to fund the assistance program. Instead, the Catch-Up/Keep-Up Program provides an incentive to generate that funding by reducing, not increasing, an element of the Company's cost of service.

The Staff has presented nothing in its testimony that would alter such a conclusion. For example, in its direct testimony, the Staff raised the specter that using a share of pipeline discounts to fund the Program would result in an inappropriate and

perhaps unlawful commingling of gas and non-gas costs since an indirect effect of the Program would be to reduce the bad debts owed by some of the Company's customers. (Exh. 9, pp. 4-5). On cross-examination, however, Staff witness David Sommerer acknowledged that the Commission had previously considered changes to the rate design of Laclede's PGA that would, in the Commission's own view, have had an adverse impact on Laclede's bad debts by increasing the financial burden on customers during the winter period. (Tr. 785-788; *see also In the matter of Laclede Gas Company's PGA Rate Design*, Case No. GR-94-328, 4 Mo. P.S.C.2d 32, 37 (1995)). Despite this indirect effect on bad debts, however, Mr. Sommerer saw nothing wrong with the Staff proposing such a change outside the context of a general rate case proceeding. (Tr. 784). Nor did he conclude that because such a change would have had an indirect effect on the Company's bad debts that it meant that non-gas costs were being commingled with gas costs in a way that threatened the PGA. (Tr. 787-788, 804). In short, Mr. Sommerer acknowledged what was clear from the beginning – that Staff's commingling concerns are little more than a red herring to be invoked or ignored depending on which approach supports the result desired by Staff.

Perhaps even more significantly, Mr. Sommerer acknowledged that the Commission could use its powers to determine an appropriate design of Laclede's PGA rates to effectuate the kind of PGA low-income funding mechanism that Laclede has proposed to fund the Catch-Up/Keep-Up Program. Specifically, Mr. Sommerer testified that just as the Commission increased MGE's base rates to fund credits on the bills of low income customers as part of that Company's low-income program, so too could the Commission increase PGA rates to fund credits on the bills of low-income customers as

part of a PGA rate design decision. (Tr. 804-809). Given this acknowledgement, it is difficult to see what legal or practical objection Staff could still have to using a share of pipeline discount savings to fund the Catch-Up/Keep-Up Program. Even if Staff wishes to characterize the Catch-Up/Keep-Up Program as something that increases PGA rates in order to provide financial assistance to low-income customers, it has effectively conceded -- and properly so -- that the Commission has the ability to accomplish such a result in any event as part of its broad powers to determine an appropriate rate design for Laclede's PGA rates.

Moreover, the fact that the Program's PGA funding would be effectuated through the use of a portion of the pipeline discount savings achieved by the Company, rather than a simple, overall increase in PGA rates, only adds to its legal soundness and propriety. As previously noted, the Commission has broad authority to approve experimental low income programs, such as the one adopted last year for MGE and the one proposed by the Company in this case. (*See* footnote 1, *supra*). The fact that there is an incentive element to the funding mechanism at issue in this case, however, imbues the Company's proposed Program with an additional legal and policy justification. For while Missouri courts have not, to Laclede's knowledge, had occasion to pass judgment on low-income assistance programs that simply increase rates in order to fund credits to customers, as MGE's does, they have had an opportunity to confirm the legal soundness and propriety of gas cost incentive mechanisms. In doing so, they have held that the Commission does indeed have the authority to permit gas utilities to flow through the PGA something other than their actual cost of gas in order to encourage them to achieve

favorable results in the management of their gas supply assets. *State ex rel. Midwest Gas Users' Assn. v. Public Service Comm'n*, 976 S.W.2d 470, 481-482 (Mo. App. 1998).

This is, of course, exactly what the Catch-Up/Keep-Up Program does with the only distinction being that the incentive afforded to Laclede under the Program is indirect because, in the end, every last dollar of the pipeline discount savings achieved by Laclede is ultimately flowed through to customers, either through the PGA or in the form of Program grants and services. As previously discussed, a portion of any discount savings achieved by the Company would be used to help customers who might otherwise be unable to pay their utility bills. To the extent this happens, both the Company and its remaining customers will be benefited over the long-term through a reduction in the bad debts that would otherwise be experienced by the Company and eventually paid for by its customers. Accordingly, while any financial benefit to the Company as a result of its pipeline negotiation efforts may be more uncertain and less direct than those that have been afforded by other incentive programs, there is still a link between the Company's performance and its financial interests. In view of this link, the Catch-Up/Keep-Up Program fully qualifies as the kind of incentive program that the court in *Midwest GasUsers' Assn. supra*, determined to be lawful. In short, the Program has the requisite attributes of incentive programs that have been approved and found lawful in the past and, as such, the funding mechanism proposed by the Company for the Program is perfectly lawful.

Nor should the Commission be detoured from approving the Program by Staff's assertions that the Program is not a properly designed incentive program. (Exh.7, p. 10; Exh. 10, p.7). Evidence presented at the hearing demonstrated that these discounts are

not funds that consumers can count on every year; pipeline suppliers can and have reduced them, and to the extent they do, gas costs to customers will increase. In fact, such evidence indicated that pipeline operators are applying pressure to reduce the level of discounts achieved by Laclede. (Tr. 328, 336). Thus, the pipeline incentive aspects of the Program can be effective even if they only result in Laclede maintaining, or lessening the reductions in, the level of pipeline discounts the Company currently achieves.

In any event, regardless of how effective one believes this feature may be in encouraging a greater level of pipeline discounts than would otherwise be the case, it is surely more effective than simply increasing PGA rates to fund the Program, as Staff suggests could be done, without any incentive at all to reduce this component of the Company's costs. Moreover, the Company has made a number of changes to the Program since it was first filed in July of this year that properly address various concerns that were raised by the Staff regarding this incentive feature. (Exh. 1, pp. 7-10). These included a provision of the Program imposing an overall \$6 million cap on the amount of pipeline discount savings that may be used to fund the Program as well as the elimination of the Company's right to retain 10 percent of the discount savings for its own use. (*Id.*).

The latter revision is particularly noteworthy because, as previously discussed, it means that every last dime of discounts savings achieved by the Company under the incentive mechanism will be flowed through to customers, either through the PGA or through the grants and services provided under the Program, including services designed to educate customers on low-cost or no-cost conservation measures and to weatherize their homes. This also brings the incentive feature of the Program squarely in line with the parameters for a properly designed incentive mechanism that were adopted by the

Commission's Natural Gas Commodity Task Force and that are contained in Exhibit 16. For example, one parameter states that "[i]ncentive mechanisms may be an effective tool when the level of compensation required by the LDC for engaging in cost reducing actions does not exceed the net benefit consumers receive for the level of cost reductions that can be reasonably anticipated to result." (Exh. 16, p. 50). In this case, of course, customers receive the net benefit of *all* of the discount savings achieved by the Company since it is not retaining any of those savings for itself but instead flowing them through, in one form or another, to its customers. Moreover, to the extent the Program results in lower uncollectible expenses due to better customer payment practices or greater discounts than would otherwise be the case, customers will receive an even larger measure of benefits.

Similarly, another parameter adopted by the Task Force provides that: "[I]ncentives should be targeted to areas of operation in which the LDC's actions have a meaningful impact in reducing costs, enhancing net revenues, or in providing other benefits that are in the customers interest, such as efficiency programs." (Exh. 16, p. 50). Once again, the incentive features of the Program are fully consistent with this parameter in that they provide Laclede with an incentive to reduce its pipeline supplier costs, which can clearly be impacted by a LDC's efforts, while also giving low-income customers both the incentive and the means to reduce their arrearages and energy consumption through conservation, weatherization and other efficiency measures that are designed to benefit all customers.

As previously discussed, the Program is also structured in a way where Laclede will only benefit if the Program does, in fact, produce the kind of reductions in

uncollectible expenses and disconnection costs that will also serve to benefit its customers over both the short and long term. As a result, the Program is also fully consistent with that Task Force Report parameter which states that “[i]ncentives should be structured to ensure that consumers receive benefits by aligning rewards to the LDC with outcomes desirable to consumers.” (Exh. 16, p. 51).¹¹

In short, it is difficult to conceive of an incentive mechanism that could be any more consistent with the parameters and principles enunciated by the Commission’s Natural Gas Commodity Task Force regarding what a properly designed incentive program should look like. In light of these considerations, Laclede would submit that the pipeline discount incentive feature of the Catch-Up/Keep-Up Program represents a demonstrably lawful and appropriate method of funding for the Program.

5. How should the Program be Funded?

As discussed above, Laclede believes that the Program can and must be funded through the use of 30% of the pipeline discount savings achieved by the Company. The Commission has previously permitted gas utilities in Missouri to retain for their own use a percentage (ranging from 10% to 30%) of all or a portion of the discounts that they negotiate with their pipeline suppliers for transportation and storage service. (Exh. 3, p. 6). The fact that such discounts would now be used to assist low-income customers under the Company’s Program rather than retained for the Company’s own use, only adds

¹¹ Even the parameter in the Task Force Report that discusses baselines does not support Staff’s position that some historical benchmark level of discounts must be used as part of the incentive funding mechanism. To the contrary, the parameter only says that baselines should be “considered” and further indicates that “desired public energy policies” should be taken into account in determining the issue. (Exh. 16, p. 51). Certainly, providing sufficient funding for a vitally needed low income assistance program qualifies as a desired energy policy that would warrant the establishment of no baseline in this case. Moreover, as Staff witness Sommerer testified during cross-examination there are a number instances in which the Commission has approved incentive mechanisms, including ones involving pipeline discounts, where no baseline at all was used. (Tr. 809-810). The same approach should be followed here.

to the reasonableness and propriety of a mechanism that has previously been used by the Commission.

Moreover, Laclede's funding proposal is the *only* one that has been presented in this proceeding since the Accounting Authority Order ("AAO") proposed by Staff does not provide any current funding whatsoever, nor any assurance of adequate funding in the future. To the contrary, past experience with the AAO process indicates that it is highly unlikely that the Company would ever recover all or even most of any outlays it would make on the Program. As Mr. Fallert indicated in his direct testimony, the return of dollars pursuant to AAO mechanisms has typically resulted in recovery of 50% or less of the original dollars on a present value basis. (Exh. 2, p. 7-9). This is due to the fact that Staff and Public Counsel have typically recommended recovery periods of 10 to 15 years (or longer), with no recognition of the deferred balance in rate base. (*Id.*). This amounts to a long-term interest free loan from the Company's shareholders to its ratepayers. (*Id.*). Moreover, these same parties have also typically advocated the actual return of these deferred amounts to the Company be reduced even further by deducting from rate base the deferred taxes associated with those amounts, even though the amounts themselves are not included in rate base. (*Id.*). The end result of this approach is that the Company's ultimate recovery of amounts deferred in an AAO is often only a fraction of the value of the original dollar deferred. (*Id.*).

Notably, no party offered any rebuttal to Mr. Fallert's assessment of how AAOs often work. In Laclede's view, it should not and cannot be required to "fund" the Catch-Up/Keep-Up Program through such an inadequate mechanism that provides no dollars now and may never provide funding that would approximate the expenditures the

Company would make on the Program. The Company's funding mechanism should accordingly be approved.

6. *Can weatherization, conservation, customer outreach and education, and administrative costs be included in the Program?*

The record in this case shows that conservation, customer outreach and education, and the third party administrative costs required to operate the Program are necessary and appropriate components of the Program. Laclede has no objection to Public Counsel's proposal that the costs associated with these activities be initially limited to 5% of the Program's funding level. As previously discussed, Laclede also has no objection to Public Counsel's proposal, which is supported by DNR, to devote \$300,000 of the Company's proposed Program funding to supplementing the Company's current weatherization program -- an amount that should be proportionately reduced, however, if such funding levels are reduced.

7. *If so, how should they be included?*

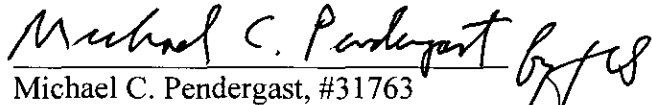
These items should accordingly be incorporated in the manner proposed by the Company in the specimen tariff sheet which it filed in this proceeding as Exhibit 13.

III. Conclusion

The experimental Catch-Up/Keep-Up Program, provides the Commission with an opportunity to address in a timely and meaningful way a need that all parties have acknowledged is immediate and compelling. It is a Program that creatively incorporates the elements of other low-income and incentive programs previously approved by the Commission in a way that is reasonably designed to benefit both low income customers and non-participating customers alike. It also reflects and accommodates to a

considerable degree the recommendations and suggestions of all of the parties to this case. For all of these reasons, it represents an experiment that is well worth pursuing. Laclede accordingly requests that the Commission approve the Program for implementation as soon as reasonably possible.

Respectfully Submitted,



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 Brief was served on the General Counsel of the Staff of the Missouri Public Service Commission on this 6TH day of December, 2002 by hand-delivery or by placing a copy of such Brief, postage prepaid, in the United States mail.

