

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

In the Matter of Laclede Gas Company's)	
tariffs designed to permit early)	Case No. GT-2009-0026
implementation of Cold Weather Rule)	Tariff number JG-2009-0033
provisions and to permit Laclede to collect)	
bad debt through the PGA)	

MOTION TO REJECT OR SUSPEND TARIFF FILING

COMES NOW the Staff of the Missouri Public Service Commission in support of the Office of the Public Counsel's July 17, 2008 Motion to Suspend Tariff Filing and Request for an Evidentiary Hearing and states:

1. Laclede Gas Company is a Missouri Local Distribution Company certificated to provide natural gas service in the St. Louis area.
2. On July 9, 2008, Laclede Gas Company (Laclede or Company) filed tariff sheets designated P.S.C. MO. No. 5 Consolidated; Thirteenth Revised sheet No. 21; Sixteenth Revised Sheet No. 22; Ninth Revised Sheet No. 23; and First Revised Sheet No. R-36-c, designed to implement Cold Weather Rule Provisions early and permit Laclede to collect bad debt costs through the PGA.
3. The proposed tariff sheets should be rejected or, in the alternative, should be suspended and set for hearing.
4. The tariff filing, which is attached, bears a proposed effective date of August 8, 2008.
5. The proposed bad debt recovery tariffs constitute prohibited single issue ratemaking. This alone is sufficient reason for the Commission to reject these proposed tariffs.

6. Missouri's prohibition against single issue ratemaking bars the Commission from allowing a public utility to change an existing rate without consideration of all relevant factors such as operating expenses, revenues, and rates of return. § 392.240.1; *State ex rel. Mo. Water Co. v. Pub. Serv. Comm'n*, 308 S.W.2d 704, 718-720 (Mo.1957); *State ex rel. Util. Consumers Council of Mo., Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 56-58 (Mo.banc 1979).

7. In addition to seeking to increase the amount of bad debt recovery in rates, Laclede seeks to abrogate the Unanimous Stipulation to which it agreed in its last rate case. On July 9, 2007, in Case No. GR-2007-0208 the parties to Laclede's last general rate case entered into a Unanimous Stipulation and Agreement which included Laclede's cost recovery for bad debt expense. Now Laclede seeks to change these Agreements through a tariff filing. It is not only unconscionable but prohibited single issue ratemaking that Laclede seeks to change the terms of the rate case Stipulation and Agreement through a tariff filing.

8. Additional reasons to reject the tariff include: (a) Laclede customers who are able to address their arrearages this summer may do so without any tariff changes; (b) the proposed tariff changes may have unintended negative consequences for customers who may otherwise be eligible for heating assistance; (c) the proposed tariffs may have other negative consequences for customers who break a payment arrangement under this new tariff proposal and are then required to make a higher payment (80% of arrearages instead of 50%) to receive gas service in November; (d) approval of this tariff could provide an incentive to Laclede to fail to take aggressive measures to collect bad debt.

9. The Court has found that gas costs may be passed through to customers because they are unique. The PGA mechanism was lawful because "[t]he gas costs which the PGA mechanism allows the companies to pass on [to customers through a surcharge] are almost

entirely the cost of obtaining the gas itself; they do not include the type of labor and materials costs used in making electricity.” *State ex rel. Midwest Gas Users' Ass'n v. Public Service Comm'n*, 976 S.W.2d 470 (Mo.App. W.D. 1998).

10. Even if Laclede could distinguish the portion of bad debt related to gas costs, this is not of the type of expense that may be recovered through the PGA. The Court in *Utility Consumers Council* held that use of the Fuel Adjustment Clause (FAC) at issue there constituted single-issue ratemaking. “Even under the file and suspend method, by which a utility's rates may be increased without requirement of a public hearing, the commission must of course consider all relevant factors including all operating expenses and the utility's rate of return, in determining that no hearing is required and that the filed rate should not be suspended.” *State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Serv. Comm'n*, 585 S.W.2d 41 49 (Mo. 1979) *see also State ex rel. Missouri Water Co. v. Public Service Comm'n*, 308 S.W.2d 704, 718-19, 720 (Mo.1957).

11. Like an FAC, permitting bad debt recovery in an ACA also constitutes single issue ratemaking in that allowing adjustment of rates other than actual gas costs is permitting rate adjustment based on consideration of a single factor and without consideration by the Commission of whether other costs had decreased and had offset any increase in bad debt. The Courts have found this to be an abdication of the Commission’s duty to consider all relevant factors in setting rates. Specifically, *Utility Consumers Council* found this violates Section 393.270.4, which requires the Commission to consider all relevant factors:

In determining the price to be charged for gas, electricity, or water the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard, among other things, to a reasonable rate of return upon capital actually

expended and to the necessity of making reservations out of income for surplus and contingencies.

State ex. rel. Missouri Water Co. v. Public Service Comm'n, 308 S.W.2d 704, 719 (Mo.1957).

Bad debt expenses are not an actual “gas cost” and are exactly the type of cost Laclede is prohibited by law from singling out for collection through a pass-through mechanism.

12. Contrary to Laclede’s assertion, Staff is unaware of any common saying that the “PGA mechanism is to allow all prudently incurred gas costs to be recovered in the exact amounts that they are incurred.” (Laclede cover letter at p. 2) Even if it were a common saying, it is an incorrect statement of the law. “While the technicalities of Missouri's PGA clause have varied over the years, the clause's basic function has remained the same: a PGA clause allows a local distribution company to automatically adjust the rates it charges its customers in proportion to the change in the rate the local distribution company is charged by its wholesale suppliers.” *State ex rel. Midwest Gas Users' Ass'n v. Public Service Comm'n*, 976 S.W.2d 470 (Mo.App. W.D. 1998).

13. Staff further recommends rejection of the “Early Implementation of the Cold Weather Rule” proposed tariff. Laclede has not requested a waiver from the provisions of the Cold Weather Rule, nor has it explained how this provision would affect customers who break a payment plan/provision. Under the current rule, customers who break payment plans are required to pay higher amounts of their arrearages to get back on the system than are customers who have never broken such an agreement. 4 CSR 240-13.055(10).

14. The goal of the Cold Weather Rule is for customers to have the opportunity to have service in the winter months. The Commission should reject this tariff proposal and direct Laclede, if it wants to pursue the tariff to request a waiver from the Cold Weather Rule and fully

explains whether this proposed tariff provision could have the effect of actually preventing or making it harder for customers to get natural gas service in November.

15. If Laclede is truly interested in assisting its customers, it could adopt Missouri Gas Energy's approach. MGE has a history of reaching out to customers prior to the winter heating season through what is known as the "Mary Ward" letter, which encourages customers to get back on the system by offering an incentive to do so. Laclede could implement a similar plan to reach out to customers without any tariff changes.

WHEREFORE, for all the reasons noted above, Staff respectfully requests that the Commission reject these tariffs as unlawful, contrary to the public interest, and constituting prohibited single issue ratemaking, or in the alternative, suspend the tariffs and set the matter for hearing.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 22nd day of July 2008.

/s/ Lera L. Shemwell
