

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

In the Matter of Laclede Gas Company's)
tariffs designed to permit early)
implementation of Cold Weather Rule)
provisions and to permit Laclede to)
collect the gas cost portion of its write-)
off's through the PGA)

Case No. GT-2009-0026
Tariff number JG-2009-0033

STAFF'S REPLY BRIEF

COMES NOW the Staff of the Missouri Public Service Commission ('Staff'), by and through the Commission's General Counsel pursuant to § 386.071, RSMo.,¹ and Commission Rule 4 CSR 240-2.040(1), and for its Reply Brief, states as follows:

Introduction

Laclede Gas Company (Laclede or Company) argues strenuously, in the nearly forty pages of its initial brief, that the Commission can – and should – modify its PGA tariff and permit it to recover a portion of its bad debt expense through the PGA/ACA mechanism. Laclede, like the Pied Piper, thereby seeks to lure the Commission down the garden path to certain reversal at the hands of Missouri's courts because, if there is one settled principle of ratemaking in this state, it is the prohibition against single-issue ratemaking. Laclede, however, urges the Commission to ignore that prohibition in this case. Staff must respectfully advise the Commission to ignore this temptation.

Argument

Single-Issue Ratemaking is Prohibited:

Single-issue ratemaking is a rate adjustment intended to change recovery of

¹ All references to the Revised Statutes of Missouri (RSMo) are, unless otherwise specified, to the revision of 2000.

some single item of expense, such as fuel costs, pensions, payroll or bad debts without consideration of other factors. Such ratemaking is prohibited because it fails to consider offsetting economies or savings elsewhere in the company's operations and expenses. ***State ex rel. Utility Consumers' Council of Missouri, Inc. v. PSC***, 585 S.W.2d 41, 47 (Mo. banc 1979) ("**UCCM**"). It is for that very reason the Commission is required to consider all relevant factors in a rate case.

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. § 393.270.4.

In *State ex. rel. Missouri Water Co. v. Public Service Comm'n*, 308 S.W.2d 704, 719 (Mo.1957), and similar cases, the courts have held that this statute means that the PSC's determination of the proper rate for gas is to be based on all relevant factors rather than on consideration of just a single factor.

State ex rel. Midwest Gas Users' Ass'n v. PSC, 976 S.W.2d 470, 479(Mo. App., W.D. 1998) ("**MGUA**").

One of the factors that the Commission must consider in a rate case is whether to allow a PGA/ACA mechanism at all:

When the PSC undertakes a general ratemaking proceeding, it considers whether to allow a PGA. The fact that a PGA is part of the rate is taken into consideration by the PSC in setting the rate approved during the rate case.

MGUA 470 at 479(emphasis added).

Another factor the Commission must consider is Laclede's business and economic risks, which the Commission must consider in a rate case. Approval of this

tariff would shift the risk of non-recovery of bad debt expense from the company to the customer without the Commission considering the reduction to Laclede's risk.

This case is not a general rate case. Therefore, the Commission cannot lawfully modify Laclede's PGA/ACA tariff in this case.

Bad Debt Expense is not appropriately collected through the PGA/ACA.

Not all of Laclede's expenses are appropriate for recovery through the PGA/ACA mechanism. The expenses that can lawfully be so recovered are "pass through" expenses, like taxes and the cost to acquire and transport the commodity. They are costs that Laclede is billed (invoiced) by a third party and that are not subject to offsetting efficiencies. Bad debts are just not that sort of "pass through" expense. With respect to the PGA, the Missouri Court of Appeals said:

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 the local distribution companies 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. At the end of every twelve-month period, the local distribution company then makes an actual cost adjustment ("ACA") filing with the PSC so that the PSC can determine whether the estimated amount previously charged customers accurately reflects the actual cost to the utility of the gas supplied.

MGUA, at 489.

In its brief, Laclede states that "bad debt costs are a reasonable and legitimate cost of doing business and the regulatory process has traditionally recognized such costs in the rates charged for utility service." (Laclede's Initial Brief at 27.) Staff agrees. Laclede incurs bad debt expense when a customer doesn't pay his or her bill. It is thus not really an expense at all, but rather a revenue shortfall. Of course, Laclede has incurred real expenses in providing service to the non-paying customer. Some part of

those expenses represent the purchase and transportation of gas to the non-paying customer, which is what Laclede here seeks to recover through the PGA/ACA mechanism.

It is as predictable as the rising of the sun that some of Laclede's customers will default. Laclede has many years of experience and doubtless can predict, using statistical techniques, the percentage of defaulters with great accuracy. However, Laclede can take steps to offset bad debt expense. It can require deposits from customers. It can promptly terminate service for non-payment. (Tr. p. 172ln. 9- p. 173, ln. 23.) It can pursue collection efforts, even to the point of suing defaulters. All of these remedies are within Laclede's control; and all of these remedies are the sort of offsetting efficiencies that the Commission is required to consider in a general rate case.

The Missouri Supreme Court has held that the Commission is authorized "to deal with an item of operating expense in a different manner than other such items as part of a pattern or design to accomplish a just and reasonable total charge to the public for [utility] service." ***State ex rel. Hotel Continental v. Burton***, 334 S.W.2d 75, 79 (Mo. 1960). This is the authority that permits the PGA/ACA mechanism at all. However, "such separate treatment must be effectuated in compliance with all of the statutes governing the PSC and with the purpose behind those statutes." ***UCCM***, at 53. In particular, the item of expense that receives different treatment must "in fact [be] different in kind from other expenses." ***MGUA***, at 479.

Laclede is already recovering its Bad Debt Expense in Base Rates.

In its brief, Laclede states that "[u]nder the approach historically employed in Missouri . . . , such costs have been recovered by providing an allowance for bad debt

write-offs in base rates.” (Laclede Initial Brief at 27.) That’s absolutely true. It is also true that Laclede’s base rates include an allowance for bad debt. Laclede witness Cline testified that bad-debt expense recovery is already “built into” the Company’s existing rates. (Cline Direct, p. 4, ll. 3-6.)

Conclusion

Staff sees no need to belabor these points. Laclede’s brief of forty pages cannot change the operative facts of this case, as set out above. This is not a case where Laclede’s PGA/ACA tariff can lawfully be modified; and bad debt expense is not the sort of expense that can lawfully be recovered through the PGA/ACA mechanism. However, we need not fear for Laclede, because it is already recovering this expense through its base rates.

WHEREFORE, by reason of all the foregoing, Staff prays that the Commission will reject Laclede’s proposed tariff sheets that would permit it to collect bad-debt expense through the PGA/ACA mechanism.

Respectfully submitted,

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Certificate of Service

I hereby certify that true and correct copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this **27th day of February, 2009**.

/s/ Kevin A. Thompson