

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

In the Matter of the Laclede Gas Company    )  
Tariff Filing to Recover Bad Debt            )  
Expenses Through the PGA and to Modify    )  
Cold Weather Rule Provisions.                )

Case No. GT-2009-0026

**REPLY BRIEF OF THE  
OFFICE OF THE PUBLIC COUNSEL**

Laclede Gas Company wants the Commission to grant Laclede the authority to increase rates based upon Laclede’s subjective selection of amounts that Laclede deems uncollectible. Those amounts would become the responsibility of all other ratepayers, regardless of whatever attempts Laclede made to collect the amounts due, and regardless of whether Laclede is already recovering its cost of service. The proposal is unlawful because the law protects consumers from overpaying for an essential service provided by a regulated monopoly. If the Missouri Legislature wants to grant Laclede this broad authority, the Legislature can consider Laclede’s proposal and change the statutes accordingly.

Laclede is requesting many things from the Commission in its proposal. Laclede wants the Commission to:

- Determine that Laclede should be “made whole” for most of the past due amounts that Laclede writes off.
- Make a determination based on a controversial and unaudited baseline bad debt amount that is not supported by accounting data.
- Approve rate changes for a rate base item outside the context of a rate case where the Commission would consider all relevant factors and conduct an audit.

- Reduce the business risks for a company claiming an 11.68% ROE without making a corresponding adjustment to the authorized return.
- Allow an accounting treatment not authorized by the Uniform System of Accounts.
- Ignore the terms and consumer protections in a Commission-approved stipulation that gave Laclede a \$38.6 million rate increase.
- Lessen Laclede's incentives to pursue collections by allowing Laclede to simply charge all customers for whatever amount Laclede writes off (thus increasing bad debt levels).
- Ignore the law.

Laclede is requesting a lot from the Commission, even though uncollectibles are not a problem for Laclede and have not been a problem for years. Laclede's bad debt levels have stabilized and Laclede is earning a very high return while other businesses and the economy are struggling. Laclede was recently given a significant number of collection and billing tools to help Laclede maintain these stable bad debt levels, in addition to the millions of dollars added to rate base for bad debt increases caused by Cold Weather Rule changes. Laclede acknowledged in its brief that gas prices are decreasing and predicted that this will cause bad debts to decrease. (Laclede Brief, p.3). The record evidence demonstrates that Laclede's requested changes are unnecessary.

#### **a. Single Issue Ratemaking**

In response to the positions of Public Counsel and the Commission's Staff that Laclede's proposal is single-issue ratemaking, Laclede argues extensively as to the lawfulness of the Purchased Gas Adjustment (PGA) mechanism, an issue not in question in this case, while devoting little of its argument to support a conclusion that the wholesale cost of gas includes uncollected write-offs. Perhaps Laclede avoided this

argument because even Laclede's witness had to admit that "[n]one of the \$6 per MMBtu that we may pay to a supplier has anything to do with our bad debts." (Tr. 82).

Laclede argues that its proposal "will unquestionably result in charging customers more accurately for what it actually costs to serve them than does the guesstimate approach used in a rate case." (Laclede Brief, p.5). Laclede later criticizes the rate case process of estimating uncollectible expense. Laclede wants the Commission to ignore the estimation inherent in Laclede's proposed tariff. The \$8.1 million base bad debt amount is the result of a convoluted estimation,<sup>1</sup> which Laclede claims resulted from the last rate case. In other words, Laclede is critical of the rate case methodology of estimating gas usage, while at the same time claiming to rely on a rate case methodology of estimating gas usage in its own proposal.

Laclede's proposal also includes constant guesswork every time Laclede makes a guess as to which accounts are uncollectible. If Laclede estimates the account is uncollectible, all ratepayers would then have to foot the bill. If Laclede guesses incorrectly and a customer's account could have been collected with a little more effort, all other ratepayers will be unnecessarily stuck with the bill as victims of Laclede's poor judgment. Laclede's assertion that their proposed treatment of bad debts is somehow more accurate is clearly false.

Laclede's claim to "more accurately" charge customers for the actual costs to serve them suggests that Laclede's proposal is somehow based on the actual cost of

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<sup>1</sup> Proposed P.S.C. MO. No. 5 Consolidated, Ninth Revised Sheet No. 23 clearly denotes that the proposal is based off of an "estimate" that Laclede claims originated in the previous rate case.

service. Until this proposal is considered in a rate case where all relevant cost factors can be considered, the Commission will have no evidence to support a conclusion as to whether a customer would be paying no more than the costs Laclede incurs to serve that customer.

**b. Retroactive Ratemaking**

Laclede argues that its proposal does not constitute retroactive ratemaking because “Laclede is not proposing to refund or recoup amounts charged, or not charged, on past bills” and would only apply the adjustment “to future customers on future bills.” (Laclede Brief, p.20). Laclede appears to have a misunderstanding of what constitutes retroactive ratemaking under §§ 393.270(3) and 393.140(5). Laclede is correct in stating that the adjustment would only be levied on future bills, since going back in time to re-bill is implausible. The effect of the proposal, however, is to change past bills because it requires a finding that past bills did not sufficiently allow Laclede to recover its bad debt expense, and allows Laclede to increase rates to recover most of the difference. The adjustments will be based off of services that were already provided, and the applicable rates already billed and paid, in essence re-billing all paying customers for these previous services. Retroactive ratemaking is “the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established.” *Utility Consumers Council of Missouri, Inc. v. P.S.C.*, 585 S.W.2d 41 (Mo. 1979) (“UCCM”). “[U]nder the prospective language of the statutes §§ 393.270(3) and 393.140(5) [past expenses] cannot be used to set future rates to recover for past losses due to imperfect matching of rates with expenses.” *Id.*

### **c. Other Cost Reconciliation Mechanisms**

Laclede argues that the Commission has “routinely permitted other cost of service items to be tracked and reconciled back to actual costs.” (Laclede Brief, p.5). All of the examples identified by Laclede are significantly different from Laclede’s present proposal, mostly because Laclede maintains substantial control over its bad debt write-offs while maintaining little or no control over the other costs identified by Laclede in comparison.

Laclede’s first example, the wholesale costs of gas, is clearly different because gas charges are imposed pursuant to tariffs approved by the Federal Energy Regulatory Commission (FERC). “Under the “filed rate doctrine” the States may not prohibit [a] local distribution company from . . . passing on these FERC-approved costs to their customers.” *Midwest Gas Users Association v. P.S.C.*, 976 S.W.2d 470, 473 (Mo. App. W.D. 1998).<sup>2</sup> This requirement does not apply to Laclede’s uncollectible account expense.

The second example, post-retirement benefits, are addressed under § 386.315 RSMo 2000, which states that the Commission “shall not disallow or refuse to recognize the actual level of expenses the utility is required by Financial Accounting Standard 106 to record for postretirement employee benefits...” Laclede has no control over the Financial Accounting standards, unlike the control Laclede has over managing uncollectibles.

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<sup>2</sup> See also, *Nantahala Power and Light Company v. Thornburg*, 476 U.S. 953 (1986) and *Mississippi Power and Light Co. v. Moore*, 108 S. Ct. 2428 (1988).

Laclede also identifies government mandates. Government mandates, like taxes, are costs over which Laclede has no control. *Hotel Continental v. Burton*, 334 S.W.2d 75 (Mo. 1960). Laclede mentions government mandated safety investments; however, Laclede does not specifically identify the safety investments to which it refers. If Laclede considers infrastructure investments to be a safety investment, infrastructure investments are authorized by § 393.1009 RSMo (Cum. Supp. 2006), and were allowed outside of a rate case after the Legislature amended the statutes. The common element among all of these examples is the lack of control by Laclede or the Commission over the costs, unlike bad debts where the Commission and Laclede can implement, and have implemented, measures that allow bad debts to be controlled.

#### **d. Unproven Assumptions**

The overriding assumption Laclede makes in its arguments, without support, is the assumption that the wholesale price of gas has a significant impact on bad debt levels. (Laclede Brief, p.6). Laclede provides the Commission with no study to prove its assertion that there is a measurable impact on bad debts caused by increases in gas prices. An actual study could show that Laclede's billing and collection practices have a far greater impact on bad debt levels than do any temporary fluctuation in gas prices. In a prior decision, the Commission rejected this vary claim and one reason cited by the Commission was that the company did not provide evidence to support the claim that gas prices influence bad debts.<sup>3</sup>

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<sup>3</sup> Case Number GO-2002-175, In the Matter of Missouri Public Service and St. Joseph Light and Power, Divisions of UtiliCorp United Inc., for Recognition of Uncollectibles Expense under the Terms of 4 CSR240-13.055(10)1, Report and Order, November 14, 2002, 11 Mo. P.S.C. 3d 600.

## **Conclusion**

Laclede questions why the Staff “would have the Commission surrender its discretion” to approve Laclede’s proposal by finding it unlawful. (Laclede Brief, p.20). The answer is simple: the Staff recognizes that the Commission cannot surrender an authority that it does not have. Just as the fuel adjustment clause was unlawful single-issue ratemaking until authorized by statute, authorizing bad debt write-offs outside of a rate case is also unlawful under the existing statutes. The proposed tariffs must be rejected.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ **Marc D. Poston**  
Marc D. Poston (#45722)  
Senior Public Counsel  
P. O. Box 2230  
Jefferson City MO 65102  
(573) 751-5558  
(573) 751-5562 FAX  
[marc.poston@ded.mo.gov](mailto:marc.poston@ded.mo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 27th day of February 2009:

General Counsel  
Missouri Public Service Commission.  
P. O. Box 360  
Jefferson City, MO 65102  
[GenCounsel@psc.mo.gov](mailto:GenCounsel@psc.mo.gov)

Michael Pendergast  
Laclede Gas Company  
720 Olive Street, Rm. 1520  
St. Louis, MO 63101  
[mpendergast@lacledegas.com](mailto:mpendergast@lacledegas.com)

**/s/ Marc Poston**

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