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

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| 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<br>Tariff number JG-2009-0033 |

## ***AMICUS* BRIEF OF MISSOURI ENERGY DEVELOPMENT ASSOCIATION**

### **Introduction**

As stated in its petition for leave to file a brief as *amicus curiae* filed contemporaneously herewith, the Missouri Energy Development Association ("MEDA") seeks to address only the policy issue in this case and not the legal issues. Specifically, MEDA will address Case Issue No. 3, because MEDA believes that the Commission should permit Laclede Gas Company ("Laclede" or the "Company") to recover the gas cost portion of its uncollectible revenues through the PGA/ACA process.

There are several arguments that support approval of Laclede's tariff in this case, but MEDA will focus on three that stand out above the others. First, because neither bad debt expenses in general, nor gas costs in particular, can be effectively controlled or predicted, the gas cost portion of bad debt should certainly be included with other gas costs in the PGA mechanism. Second, allowing the gas cost part of bad debt expenses to be reconciled in the PGA will help all of the parties and the Commission to work together to promote reasonable regulatory and social policy measures that affect bad debt, such as collection practices and the Cold Weather Rule. Finally, the Company's tariff proposal is not unusual or extraordinary. To the contrary, numerous state utility regulatory commissions have already approved some form of adjustment mechanism for the gas cost portion of bad debt.

## Discussion

### 1. Because bad debt, like gas costs, cannot be effectively controlled or predicted, the gas cost part of bad debt expenses should be moved to the PGA where it can be reconciled along with other gas costs.

Bad debt expenses are affected by four main factors: (i) natural gas prices; (ii) weather; (iii) changes in governmentally mandated collection practices, e.g. Cold Weather Rule amendments; and (iv) economic conditions. (Ex. 1, pp. 3-4). All of these major factors are largely or completely beyond the control of the utility. (*Id.*) None can be predicted for any reasonable period in advance. All lead to potentially material volatility in bad debt expenses.

These factors (i.e., the lack of control, the unpredictability, and the material volatility) combine to make it very difficult to set bad debt expense levels in a rate case. These same conditions respecting gas costs led to the formation of the PGA back in the early 1960s as a solution to stop an avalanche of rate proceedings caused by changing gas prices, and to protect both the utility and its customers from the impact of swings in wholesale gas prices that were beyond the ability of the utility to control. *See* ***Re: Laclede Gas Company****,* 10 MO.P.S.C. (N.S) 442, 451-452 (November 2, 1962). These same conditions respecting weather led to the adoption of measures, such as the straight fixedvariable rate design, that greatly reduce or eliminate the effect of weather variability on the recovery of a utility's distribution costs.

In these situations, a tracking or reconciling mechanism is the fairest rate design for both the utility and its customers, as noted by the Western District Appeals Court in ***State ex rel. Midwest Gas Users' Ass'n v. Public Service Comm'n***, 976 S.W.2d 470 (Mo.App. W.D. 1998)**.** This solution prevents both parties from either suffering a significant loss or reaping a significant windfall. It is especially appropriate in the utility industry because of the lag time involved in making a price change. Without the ability to quickly change rates, it is hard to imagine how either a gasoline station operator or its consumers would have survived under a utility regulatory regime as oil prices swung from $50 per barrel to $140 per barrel and then back down under $40 per barrel, all in a relatively short time frame. Likewise, the reconciling function of the PGA undoubtedly saved someone from harm during the great gas price swing of 2008, for without the PGA it would have been a matter of pure serendipity as to whether a utility was placed in the completely untenable position of paying $14 per MMBtu for gas while collecting only $7 in gas cost, or whether the reverse occurred and customers were caught paying $14 per MMBtu for gas that cost $7.

The same principles apply to bad debt, albeit on a somewhat smaller scale. As the evidence in this case showed, Laclede's bad debt increased nearly $6 million in one year (2002), and then fell nearly $4 million the next year (2003). (Exh. 3, p. 5) Whether the customer or the utility will come out the loser in these circumstances depends on the simple luck of when base rates happen to be set.

Hence, although there is ample evidence to support a tracking mechanism for <u>all</u> of bad debt, Laclede's request is to move to the PGA only that portion of its bad debt expense comprised of gas costs. This will keep the portion of bad debt that varies most significantly due to these uncontrollable factors in the PGA mechanism where all other gas costs are reflected and reconciled, while leaving the Company with of the bad debt risk associated with the delivery rates, more than enough incentive to assure robust collection activity for the benefit of paying utility customers. In summary, because bad debt is uncontrollable, unpredictable and volatile, there should be no doubt that the gas cost portion of that expense should be included in the PGA reconciling mechanism.

**2. Reconciling the gas cost part of bad debt expenses in the PGA will position all of the parties and the Commission to work together more productively to enact reasonable regulatory and social policies that affect bad debt.**

In 2001, 2005, and 2006, the Commission made changes to the Cold Weather Rule that were proposed, advocated or supported by Staff and the Office of Public Counsel. These changes were generally designed to relax credit and collection rules, exposing the utilities to increased bad debts expenses. These events took place outside of rate cases, and the utilities were therefore faced with the prospect of absorbing cost increases not only in the smaller part of the bad debt expense associated with distribution costs, but also to the gas cost portion of the bad debt expense, which is two to three times larger than the distribution piece. Because of this potential impact, the utilities had little choice but to oppose these social measures unless they were permitted to recover these potentially significant costs increases.

On the other hand, some parties seeking to provide more lenient credit terms to customers, as a means of helping them restore or maintain utility service, may have been motivated in part by the prospect that the costs incurred by the utility to do so would be absorbed by the utility rather than the utility's customers, or would be deferred until a future rate case where recovery of the cost increases might be denied. Certainly, the opposition of these parties to reasonable recovery mechanisms for the cost of complying with such rule changes contributed to the notion that the scope and magnitude of their proposed changes were driven in part by the prospect that a "free lunch" was at hand. Thus, rather than concentrating on what should be done as a matter of optimal regulatory and social policy, a painful process ensued that was instead more focused on the issue of cost recovery.

The Company's proposed tariff would serve to put all parties "on the same page" by making a significant portion of the cost affects of rule changes, whatever they may be, subject to certain and transparent recognition in the PGA. Moreover, the portion that would be subject to such recognition would be limited to the variable, out-of-pocket gas supply costs that the utility has to incur to meet whatever new regulatory mandates are being imposed, not the distribution portion that includes the utility's return. The outcome under the Company's proposal would better align each parties' interest and, in the process, ensure that regulatory policies are made with a far more straightforward recognition of both the benefits and costs of such policies.

Of course, Commission rule changes can also reduce bad debt. For example, changes to collection rules regarding deposits, credit scoring, hours when disconnection is permitted and notice requirements can lead to reduced bad debt expense. However, if the gas cost portion of such bad debt is being recovered in the PGA, then a utility's customers would receive the lion's share of any such expense reductions through the PGA.

**3. The Company's tariff proposal is neither unusual nor extraordinary; similar measures have been approved by numerous state utility regulatory commissions.**

The Commission need not be concerned that the Company's proposal is unproven or risky. The evidence in this case clearly demonstrated that numerous jurisdictions have already authorized some form of bad debt recovery. (Exh 1, p. 8; Exh 5, pp. 12-18, Schedule RAF-3) The concept is so widely accepted that a map of the United States revealed that states in every region of the country have approved bad debt adjustment mechanisms, including the Northeast and Mideast, the South, the Midwest, and the West. (Exh 5, Schedule RAF-2). In all, utility regulatory commissions in more than 20 states have endorsed these programs. For the reasons described above, MEDA urges the Commission to join this growing trend.

## Conclusion

The gas cost portion of bad debt expense should be incorporated into the PGA for three major reasons, among others. First, it is the fairest and most effective and accurate way to handle volatile costs that cannot be effectively controlled or predicted. Second, recovering the gas cost portion of bad debt expense in the PGA will reduce the rancor over cost recovery and help all of the parties and the Commission to work together better to enact regulatory and social policy measures concerning matters that affect bad debt expense. Finally, Missouri should join the significant number of utility regulatory commissions that have considered and approved this concept.

Respectfully submitted,

/s/ Paul A. Boudreau
Paul A. Boudreau - MO Bar # 33155
Brydon, Swearengen & England, P.C.
312 East Capitol Avenue, P. O. Box 456
Jefferson City, Missouri 65102-0456
Telephone: (573) 635-7166
Facsimile: (573) 636-6450
Email: paulb@brydonlaw.com
Attorney for Missouri Energy Development Association

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Amicus Brief has been duly served on this 13th day of February, 2009, by hand-delivery, facsimile, electronic mail, or by placing a copy of such brief, postage prepaid, in the United States mail to the following:

General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102-0360

Office of the Public Counsel
Governor Office Building
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102-2230

Michael C. Pendergast
Laclede Gas Company
720 Olive Street, Suite 1250
St. Louis, MO 63101

/s/ Paul A. Boudreau
Paul A. Boudreau